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The President

National Child's Day, 2001

By the President of the United States of America

A Proclamation

Our children, who are today dreaming big dreams and who are filled with hope, will someday serve as leaders in government, industry, education, and the arts. For the good of our country and its continued progress and advancement, we must strive to give all young Americans the best possible start in life.

Falling between Mother's Day and Father's Day, Child's Day is celebrated this year on June 3, the first Sunday of the month. This special occasion gives us a unique opportunity to remember the joys and wonder of our own childhood and to reflect on how positive and healthy experiences in one's early years significantly influence later achievements and happiness.

All adults must work together to ensure the safety and well-being of our Nation's most precious resource, our children. Every youngster deserves to live in a safe, permanent, and caring family; but, unfortunately, this is not always the case. Government cannot make people love one another, but it can and must cultivate a climate that helps families, as well as the individuals and groups that support them.

Our Nation must reaffirm its commitment to loving and caring for our children. We must improve the safety of schools and neighborhoods and mobilize faith-based and community groups to fight poverty and addiction. Because many youngsters now grow up in single-parent homes, we must promote responsible fatherhood, in all its aspects, including spiritual leadership, emotional security, and financial support. We must also help families in crisis, protect children from abuse and neglect, and encourage adoption for children who must be removed from their biological parents.

Our responsibility to our young people, however, extends beyond just their physical and emotional well-being. We must also provide them with a quality education, so that no child is left behind in our fast-paced global economy. Adults should also encourage youngsters to always set high goals, make right choices, and stay involved in their communities. By doing so, boys and girls can pursue lives of meaning and fulfillment as contributing members of society.

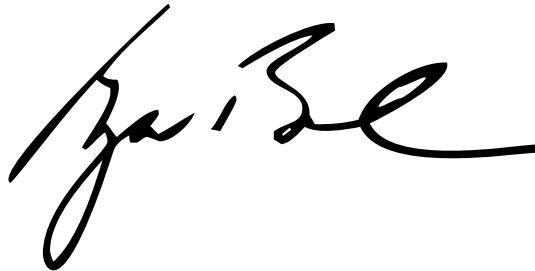
Every child in every neighborhood has unique gifts to offer. We must nurture our children's dreams, help them develop their talents and abilities, and ensure their healthy development so that they may reach their full potential. Our success in this vital endeavor will affect the direction of their lives and the future strength and vitality of our Nation.

In recognition of the importance of our Nation's children, the Senate, by Senate Resolution 90 approved May 25, 2001, has designated June 3, 2001, as "National Child's Day" and has requested that the President issue a Proclamation calling for appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 3, 2001, as National Child's Day. I encourage all Americans to share in the mission of preparing

our young people for life's challenges and opportunities. By reading to youngsters, listening to their cares and concerns, and providing them with safe and loving homes, we can make a positive and lasting contribution to their health, happiness, and well-being.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of June, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.

A handwritten signature in black ink, appearing to read "Bill Clinton", with a long horizontal flourish extending to the right.

[FR Doc. 01-14407

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Rules and Regulations

Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV01-932-1 FIR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate established for the California Olive Committee (Committee) for the 2001 and subsequent fiscal years from \$21.73 to \$27.90 per ton of olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this

regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning on January 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to increase the assessment rate established for the

Committee for the 2001 and subsequent fiscal years from \$21.73 per ton to \$27.90 per ton of olives handled.

The California olive marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on December 12, 2000, and unanimously recommended fiscal year 2001 expenditures of \$1,348,242 and an assessment rate of \$27.90 per ton of olives. In comparison, last year's budgeted expenditures were \$2,472,235 and the assessment rate was \$21.73. Assessable tonnage for 2001 was estimated at 46,374, significantly below last year's 113,750 tons. Although the Committee reduced expenditures in marketing development and research, the significant decrease in tonnage necessitates a higher assessment rate. The reduced research expenditures will fund: (1) Continued research and development of the mechanical olive harvester and (2) scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly lower because handlers have taken more responsibility for market development.

The following table compares major budget expenditure recommendations for the 2001 fiscal year with those from last year.

Budget expenditure	2000	2001
Administration ...	\$356,190	\$343,490
Research	868,550	408,337
Market Development	1,212,495	596,415

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual tonnage, and additional pertinent factors. The significant tonnage decrease in 2001, due in large part to the alternate-bearing nature of olives, has made it necessary for the Committee to increase the assessment rate from \$21.73 to \$27.90 per ton, an increase of \$6.17. Income derived from handler assessments, interest, and reserve funds will be adequate to cover budgeted expenses. Funds in the reserve will continue to be less than the maximum permitted by § 932.40 of the order (approximately one fiscal year's expenses) by the end of 2001.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,200 producers of olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

This rule continues to increase the assessment rate established for the Committee and collected from handlers for the 2001 and subsequent fiscal years from \$21.73 per ton to \$27.90 per ton of olives. The Committee unanimously recommended 2001 expenditures of \$1,348,242 and an assessment rate of \$27.90 per ton. The assessment rate of \$27.90 is \$6.17 higher than the 2000 rate. The estimated quantity of assessable olives for the 2001 fiscal year is 46,374 tons. Thus, the \$27.90 rate should generate enough funds to meet this year's budgeted expenses, when combined with funds from the authorized reserve and interest income.

The following table compares major budget expenditure recommendations for the 2001 fiscal year with those from last year.

Budget expenditure	2000	2001
Administration ...	\$356,190	\$343,490
Research	868,550	408,337
Market Development	1,212,495	596,415

The reduced research expenditures will fund: 1) Continued research and development of the mechanical olive harvester and 2) scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly lower because handlers have taken more responsibility for market development.

A higher assessment rate was recommended for 2001 because the 2001 fiscal year assessable tonnage is approximately 59 percent smaller than last fiscal year's tonnage, due in large part to the alternate bearing nature of the crop:

1999	2000	2001
67,900	113,750	46,374

The Committee reviewed and unanimously recommended 2001 expenditures of \$1,348,242, which reflects decreases in the research, market development and administrative budgets. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, the Research Subcommittee, and the Marketing Subcommittee. Alternate spending levels were discussed by these groups, based upon potential reductions in the funding of various research and market development projects. The Committee determined it was necessary to increase the assessment rate to cover these expenses because the significant decrease in tonnage will not provide sufficient funds to cover anticipated expenses. The assessment rate of \$27.90 per ton of assessable olives was derived by considering anticipated expenses, the Committee's estimate of assessable olives, and additional pertinent factors.

A review of historical and preliminary information pertaining to the upcoming fiscal year indicates that the grower revenue for the 2000–2001 crop year is estimated to be approximately \$36,068,864. With an assessment rate of \$27.90 per ton, the estimated assessment revenue to the Committee will be \$1,293,834 for the 2001 fiscal year, or approximately 3.59 percent of grower revenue.

This action continues to increase the assessment obligation imposed on handlers for fiscal year 2001 by \$286,128 (\$6.17 difference between the new and past rate x 46,374 assessable tonnage estimate for 2001). Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, increasing the assessment rate increases the burden on handlers, and may increase the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 12, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on California olive handlers. As with all

Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on March 6, 2001 (66 FR 13389). Copies of that rule were also mailed or sent via facsimile to all olive handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on May 7, 2001, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 66 FR 13389 on March 6, 2001, is adopted as a final rule without change.

Dated: June 1, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01-14270 Filed 6-5-01; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV-01-985-1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2001-2002 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2001-2002 marketing year, which begins on June 1, 2001. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 900,208 pounds and 48 percent, respectively, and for Class 3 (Native) spearmint oil of 938,944 pounds and 45 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

EFFECTIVE DATE: June 1, 2001, through May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724; Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended,

regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 2001-2002 marketing year, which begins on June 1, 2001. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to authority in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 2001-2002 marketing year at its October 11, 2000, meeting. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 900,208 pounds and 48 percent, respectively, and a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 938,944 pounds and 45 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2001–2002 marketing year, which begins on June 1, 2001, and ends on May 31, 2002. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order currently accounts for approximately 55 percent of the annual U.S. production of Scotch spearmint oil and over 90 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the U.S. produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 72 percent was produced in the regulated production area in the Far West. The Far West continued to produce an average of about 69 percent of the world's Scotch spearmint oil supply during the period from 1980 to 1990. International production characteristics have changed since 1990, however, with foreign Scotch spearmint oil production contributing significantly to world production. The Far West's market share as a percent of total world sales has averaged about 44 percent since 1990.

Starting with the 1996–97 marketing year, the Committee employed a marketing strategy for Scotch spearmint oil that was intended to foster market stability and expand market share. This marketing strategy was an attempt to remain competitive on an international level by regaining a substantial amount of the Far West's historical share of the global market for this class of oil. In employing this strategy, the Committee was recommending the establishment of a salable quantity and allotment percentage for Scotch spearmint oil in excess of the estimated trade demand for each marketing year. In the development of its annual marketing policy statements during this period, the Committee's strategy considered general market conditions for each class of spearmint oil, including the Far West's world market share as it relates to the overall market stability of spearmint oil.

During its deliberations at the October 11, 2000, meeting, however, the Committee concluded that its marketing strategy for Scotch spearmint oil of the past few seasons has not been entirely effective. Although sales have increased, the Far West's market share as a

percentage of total world sales has not increased on average, and the market price for Scotch spearmint oil has continued to decline throughout this period. During the last two marketing years, the price paid to producers for Scotch spearmint oil has dropped to a low of \$7.00 per pound. The Committee believes that such a price is generally below the cost of production for most producers.

Furthermore, due to the depressed market, many producers with allotment base have not planted Scotch spearmint in recent years. The order (7 CFR 985.53(e)) requires that producers must make a bona fide effort to produce their annual allotment, or failing to do so, have their allotment base reduced by an amount equivalent to the unproduced portions. With prices near or below the cost of production, many producers also face the potential of going out of business. The Committee determined that its only responsible course of action was to adjust its marketing strategy in an attempt to stabilize prices at a reasonable level while still considering market share. Therefore, the Committee's recommendation for Scotch spearmint oil for the 2001–2002 marketing year is based on a desire to remain competitive on an international level while maintaining the supply of oil at a level that could enhance prices and thus help producers to remain solvent. The Committee believes that this recommendation will stabilize the market at a level that is sustainable for the majority of Scotch spearmint oil producers.

Despite the recent downward trend in the price of both classes of spearmint oil, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from about \$4.00 per pound to about \$12.50 per pound during the period between 1968 and 1980. Excluding the most recent two marketing years, prices since the order's inception have generally stabilized at about \$11.00 per pound for Native spearmint oil and at about \$13.00 per pound for Scotch spearmint oil. Over the last couple of years, the price has dropped to about \$9.00 per pound and \$7.00 per pound, respectively, for Native and Scotch spearmint oils despite the Committee's efforts to balance available supplies with demand. Based on comments made at the Committee's meeting, factors that could have contributed to the low prices

include the relatively poor returns being realized from other essential oils, an abundant supply of spearmint oil, and the continuing overall weak farm situation.

The major conditions contributing to the Committee's current recommendation of 45 percent for the Native spearmint oil allotment percentage for the 2001–2002 marketing year include a surplus of oil and the resultant softening price being offered to producers. The surplus has a basis in the higher than anticipated carry-in on June 1, 2000, caused in part by a late-season increase in last year's salable quantity. The Committee recommended that increase last year due to signals from the industry that there was demand for more oil—a demand that did not materialize as expected. Thus, with over 90 percent of the world production currently located in the Far West, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand.

The Committee based its recommendation for the salable quantity and allotment percentage for each class of spearmint oil for the 2001–2002 marketing year on the summary presented above, as well as the data outlined below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 2001—735,517 pounds. This figure is derived by subtracting the estimated 2000–2001 marketing year trade demand of 900,000 pounds from the revised 2000–2001 marketing year total available supply of 1,635,517 pounds. The 2000–2001 marketing year trade demand is an updated figure based on sales to date, historical data, and input from spearmint oil producers and handlers. The 2000–2001 marketing year total available supply has been revised from the figure originally estimated by the Committee during its deliberations for the 2000–2001 marketing year salable quantities and allotment percentages due to updated production estimates and the available reserve pool oil on June 1, 2000.

(B) Total estimated allotment base for the 2001–2002 marketing year—1,875,433 pounds. This figure represents a one percent increase over the revised 2000–2001 total allotment base. Section 985.53(d)(1) requires that the Committee make additional allotment bases available for each class of oil in the amount of no more than 1 percent of the total allotment base for

that class of oil. The total allotment base for each marketing year is generally revised during each such marketing year since it is estimated several months earlier during the respective annual marketing policy meetings.

(C) Average salable quantity as recommended at the five production area meetings—888,955 pounds.

(D) Recommended allotment percentage—48 percent. This figure is based on the average of the salable quantity recommended at the five production area meetings divided by the total estimated allotment base. Committee records show that this is slightly above the average of the past seven years' sales (891,815 pounds or 47.6 percent).

(E) The Committee's recommended salable quantity—900,208 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(F) Estimated available supply for the 2001–2002 marketing year—1,635,725 pounds. This figure is the sum of the recommended salable quantity and the estimated carry-in on June 1, 2001.

(G) Estimated trade demand for the 2001–2002 marketing year—875,000 pounds. This figure is based on estimates provided by producers and handlers at the five Scotch spearmint oil production area meetings held in September 2000. These estimates were derived using average sales figures for the past 20 years as well as input from handlers regarding current and projected demand for Far West spearmint oil.

(H) Estimated carry-out on May 31, 2002—760,725 pounds. This figure is the difference between the estimated available supply and the estimated trade demand for the 2001–2002 marketing year.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2001—130,929 pounds. This figure is the difference between the estimated 2000–2001 marketing year trade demand of 990,000 pounds and the revised 2000–2001 marketing year total available supply of 1,120,929 pounds.

(B) Estimated trade demand for the 2001–2002 marketing year—1,000,000 pounds. This figure is based on the average of the estimates provided at the four Native spearmint oil production area meetings held in September 2000.

(C) Salable quantity required from the 2001–2002 marketing year production—864,071 pounds. This figure is the calculated difference between the estimated 2001–2002 marketing year trade demand and the estimated carry-in on June 1, 2001.

(D) Total estimated allotment base for the 2001–2002 marketing year—2,086,542 pounds. This figure represents a one percent increase over the revised 2000–2001 total allotment base.

(E) Computed allotment percentage—41.7 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—45 percent. This is the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the four production area meetings (46.4 percent), and input from producers and handlers.

(G) The Committee's recommended salable quantity—938,944 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2001–2002 marketing year—1,069,873 pounds.

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Scotch spearmint oil salable quantity of 900,208 pounds and allotment percentage of 48 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Native spearmint oil salable quantity of 938,944 pounds and allotment percentage of 45 percent are based on the anticipated supply and trade demand during the 2001–2002 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2001–2002 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits

derived from a stable market and improved returns. In conjunction with the issuance of this final rule, the Committee's marketing policy statement for the 2001–2002 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 2001–2002 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the order,

and approximately 116 producers of Class 1 (Scotch) spearmint oil and approximately 102 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts of less than \$500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 116 Scotch spearmint oil producers and 7 of the 102 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm has to have considerably more acreage than is planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms fall into the SBA category of large businesses.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2001–2002 marketing year. The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers

generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The U.S. spearmint oil market is considered a mature agricultural operation. Aggregate demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil is expected to expand slowly in line with population growth. Demand for spearmint oil at the farm level is derived from the demand for spearmint-flavored products at retail and the manufacturers of chewing gum, toothpaste, and mouthwash are by far the largest users of mint oil. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin." However, spearmint flavoring tends to be a very small component of the retail price for the products in which it is used.

Mint producers tend to respond to price signals. Consequently, there has been a cycle where larger producer stocks of unsold spearmint oil have depressed producer prices for a number of years, and then shortages and high prices occur in subsequent years.

The wide fluctuations in supply and prices that result from this cycle create liquidity problems for some producers, particularly those with a heavy debt load. Moreover, producers have been less able to weather these cycles in recent years because of the decline in prices of many alternative crops. As noted earlier, almost all spearmint oil producers diversify by growing other crops. It is important that spearmint be

rotated with other crops to avoid the development of disease problems.

Instability in the spearmint oil subsector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers. From 1980 through 2000, production averaged 1,888,810 pounds. The standard deviation over this period was 480,911 pounds. This indicates that production can vary by over 480,000 pounds from year-to-year.

This variation in production has necessitated the use of a reserve pool to store product in large production years; these stocks are drawn down in short production years. In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the industry to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of that oil which producers may sell during the marketing year.

The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base. Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed into a reserve pool administered by the Committee.

The reserve pool oil may not be sold during the current marketing year unless the Secretary approves a Committee recommendation to make a portion of the pool available. There is a reserve pool for each class of oil. However, a producer's reserve oil can be used to fill deficiencies in production (which is less than the salable quantity) and excess production can be sold to fill other producers' deficiencies.

The order attempts to minimize the price depressing effect that excess producer stocks have on unsold spearmint oil. Furthermore, the order attempts to stabilize prices by having stocks available in short supply years when prices would increase

dramatically, and limiting supply and establishing reserves in high production years when prices would fall dramatically.

It is the goal of the Committee to balance supply and demand with an appropriate carry-out in order to maintain market stability. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus and spearmint oil goes unsold.

To assess the impact that volume control has on the prices producers receive for their commodity, an econometric model has been developed projecting that the volume control mechanism used by the spearmint oil industry will result in decreased production. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year.

The price received by producers for harvesting their crops is largely determined by the level of production and carry-in inventories. In years of oversupply and low prices, the season average producer price of spearmint oil has failed to cover the average variable cost of production. The estimated model provides a way to see what impacts volume control may have on producer prices. The econometric model is used to estimate producer prices with and without regulation. Without volume controls, the estimated season-average producer price would be approximately \$8.97 per pound and production is assumed to increase to 3,961,975 pounds. With volume controls, production would be limited to the salable quantity of 2,086,542 pounds and the producer price would be estimated at approximately \$10.43 per pound.

The Committee has estimated the total trade demand for spearmint oil to be 1,929,623 pounds for the 2001–2002 marketing year. Without volume controls, the volume supplied to the market would be approximately 3,961,975 pounds. This would result in a severe surplus situation for the spearmint oil market. This situation would not only negatively impact producer prices this year, but would dampen prospects for prices in future years because of the buildup in stocks. The econometric model shows that for every one percent increase in carry-in inventories, a decrease of 0.07 percent in producer prices occurs. The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the disastrous results of over-supplying these markets. The use of volume controls is believed to have

little to no effect on consumer prices and will not result in fewer retail sales.

Moreover, the use of volume controls is believed to have a positive impact on producers' revenues. With regulation, producers' revenues are estimated to be \$20,125,968. In this scenario, demand is estimated at 1,929,623 pounds and price at \$10.43 per pound. Without regulation, producer prices are estimated to be \$8.97 per pound and the total demand for spearmint oil would have to increase to 2,243,698 pounds for producers to be as well off as in the regulated scenario. However, even if demand were to increase to 2,243,698 pounds in response to the lower \$8.97 per pound price, over 1,700,000 pounds of spearmint oil would likely be placed in storage, putting tremendous downward pressure on price the next crop year.

The Committee discussed alternatives to this rule including higher and lower levels for the salable quantities and allotment percentages for both classes of oil, as well as not regulating the handling of spearmint oil during the 2001–2002 marketing year.

During this discussion, one producer recommended that the Committee continue with the Scotch spearmint oil marketing strategy that it has used in the recent past. He recommended the establishment of an allotment percentage of 65 percent or higher, or alternatively, that there be no regulation established for Scotch spearmint oil during the 2001–2002 marketing year. The producer was of the opinion that the global nature of Scotch spearmint oil production negates the stabilizing benefits of the order, and therefore the order, in regards to Scotch spearmint oil, no longer effectuates the declared policy of the Act. He opined that a swing in policy from 65 percent to a 48 percent allotment percentage is radical and will not stabilize the market nor improve prices to producers.

With several individuals commenting during the meeting, however, most indicated support for a change in the marketing strategy for Scotch spearmint oil to an approach that takes into consideration current price, supply, and demand along with the Far West's share of the world market. It was noted that, although world production of Scotch spearmint oil has increased significantly, the provisions of the order in regards to this class of oil are still relevant since demand for high quality Far West spearmint oil remains relatively good. Blending of essential oils is more prevalent today than in the past. Consequently, the Committee believes that buyers will continue to seek out the quality Far West spearmint

oil for the purpose of blending with the readily available lower quality oils. The Committee's belief that the Scotch spearmint oil market can be improved and stabilized is reflected in its recommendation to establish the salable quantity and allotment percentage at 900,208 pounds and 48 percent, respectively. The Committee is of the view that levels higher than 48 percent could cause further depression in prices, thus potentially forcing some producers out of business.

The Committee discussed alternative allotment percentage levels for Native spearmint oil from a low of 43 percent to a high of 46 percent. With the current price for Native spearmint oil lower than the 20 year average, and demand fairly flat, the Committee, after considerable discussion, decided on 938,944 pounds and 45 percent as the most effective salable quantity and allotment percentage, respectively, for the 2001–2002 marketing year.

Further, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from about \$4.00 per pound to about \$12.50 per pound during the period between 1968 and 1980. Excluding the most recent two marketing years, prices since the order's inception have generally stabilized at about \$11.00 per pound for Native spearmint oil and at about \$13.00 per pound for Scotch spearmint oil. Over the last two years, the price has dropped

to about \$9.00 per pound and \$7.00 per pound, respectively, for Native and Scotch spearmint oils despite the Committee's efforts to balance available supplies with demand.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of over a million pounds of spearmint oil reserves would have on the market. Thus, according to the Committee, levels for the salable quantities and allotment percentages either higher or lower than those recommended would not achieve the intended goals of market and price stability.

As stated earlier, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581-0065.

Accordingly, this action does not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Like all Committee meetings, the October 11, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons were also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule was published in the **Federal Register** (66 FR 20615) on April 24, 2001. A 15-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. A copy of the proposed rule was both faxed and mailed to the Committee office, which in turn notified Committee members and spearmint oil producers and handlers of the proposed action. A copy of the proposal was also made available

on the Internet by the U.S. Government Printing Office. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2001-2002 marketing year begins on June 1, 2001. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new § 985.220 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.220 Salable quantities and allotment percentages—2001-2002 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2001, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 900,208 pounds and an allotment percentage of 48 percent.

(b) Class 3 (Native) oil—a salable quantity of 938,944 pounds and an allotment percentage of 45 percent.

Dated: June 1, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01-14236 Filed 6-1-01; 2:02 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-CE-25-AD; Amendment 39-12244; AD 2001-11-03]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models F33A, A36, B36TC, 58/58A, C90A, B200, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Models F33A, A36, B36TC, 58/58A, C90A, B200, and 1900D airplanes equipped with a KA-33 cooling blower. This AD requires you to incorporate certain electrical parts to protect cooling blowers. This AD is the result of several reports of circuit breakers failing to protect cooling blowers on the affected airplanes. The actions specified by this AD are intended to protect the blower motor circuit and reduce the possibility of emission of smoke or a burning odor into the cockpit or passenger compartment as a result of a failed or seized blower motor.

DATES: This AD becomes effective on July 20, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 20, 2001.

ADDRESSES: You may get the service information referenced in this AD from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-25-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Dixon, Aerospace Engineer, FAA,

Wichita Aircraft Certification Office,
1801 Airport Road, Mid-Continent
Airport, Wichita, Kansas 67209;
telephone: (316) 946-4152; facsimile:
(316) 946-4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received several reports of blower motors failing, seizing, smoking, and producing a burning odor that enters the cabin and passenger compartment. These events are the result of the blower motor having circuit protection of more than 1 ampere. This amount of circuit protection does not prevent the blower motor from smoking and creating a burning odor should it fail or seize.

What Are the Consequences if the Condition Is Not Corrected?

This condition could result in smoke or burning odor entering the cockpit or passenger compartments.

Has FAA Taken any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models F33A, A36, B36TC, 58/58A, C90A, B200, and 1900D airplanes equipped with a KA-33 cooling blower. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 14,

2001 (66 FR 10226). The NPRM proposed to require you to incorporate certain electrical parts to protect cooling blowers.

Was the Public Invited To Comment?

Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

FAA's Determination and Provisions of This AD

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

- Will not change the meaning of the AD; and
- will not add any additional burden upon the public than was already proposed.

What Are the Differences Between the Service Bulletin and This AD?

Raytheon specifies in the service information that you are to do this modification at the next scheduled inspection or before 6 months or 600 hours time-in-service, whichever comes

first. We require you do the modification within the next 6 calendar months or 600 hours time-in-service (TIS), whichever comes first, after the effective date of this AD. We cannot enforce a compliance time of "at the next scheduled inspection." We believe that 6 calendar months or 600 hours TIS will give the owners/operators of the affected airplanes enough time to have the required actions done without compromising the safety of the airplanes. This will allow the owners/operators to work this modification into regularly scheduled maintenance.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 3,403 airplanes in the U.S. registry.

Models	Number of U.S. Airplanes Affected
F33A, A36, B36TC, and 58/58A	2,385
C90A	275
B200	343
1900D	400

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection for Beech Models F33A, A36, B36TC, and 58/58A airplanes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × \$60 per hour = \$60	No parts needed for inspection.	\$60	2,385 × \$60 = \$143,100.

For Beech Models F33A, A36, B36TC, and 58/58A airplanes, we estimate the following costs to do any necessary

circuit breaker installation that will be required based on the results of the inspection. We have no way of knowing

the number of airplanes that will need the circuit breaker installation:

Labor cost	Parts cost	Total cost per circuit breaker installation
1 workhour × \$60 per hour = \$60 to do each circuit breaker installation	\$33	\$60 + \$33 = \$93.

We estimate the following costs to do the installation for Beech Model C90A airplanes. We have no way of knowing how many airplanes will need the in-line fuse holder and 1 ampere slow-blow fuse installation:

Labor cost	Parts cost	Total cost per in-line fuse holder and 1-ampere fuse installation
1 workhour × \$60 per hour = \$60 to do each in-line fuse holder and 1-ampere slow-blow fuse installation	\$12	\$60 + \$12 = \$72.

We estimate the following costs to do the installation for Beech Models B200 airplanes. We have no way of knowing how many airplanes may need the in-line fuse holder and 1 ampere slow-blow fuse installation:

Labor cost	Parts cost	Total cost per in-line fuse holder, 1-ampere fuse installation, and junction box re-work
2 workhours × \$60 per hour = \$120	\$19	\$120 + \$19 = \$139.

We estimate the following costs to do the installation for Beech Models 1900D airplanes. We have no way of knowing the number of airplanes that will need the in-line fuse holder and 1 ampere slow-blow fuse installation:

Labor cost	Parts cost	Total cost per in-line fuse holder and 1-ampere fuse installation
1 workhour × \$60 per hour = \$60	\$12	\$60 + \$12 = \$72.

The manufacturer will allow warranty credit for labor and parts to the extent noted in the service bulletin.

Regulatory Impact

Does this AD Impact Various Entities?

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.

Does This 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) 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 final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under 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 adding a new AD to read as follows:

2001-11-03 Raytheon Aircraft Company:
Amendment 39-12244; Docket No. 2000-CE-25-AD.

(a) *What airplanes are affected by this AD?*
This AD affects the following airplanes that are certificated in any category:

Model	Serial Nos.
Beech F33A	CE-1050 through CE-1791.
Beech A36	E-2205 through E-3217.
Beech B36TC	EA-443 through EA-628.
Beech 58/58A	TH-1436 through TH-1883.
Beech C90A	Do not have the EFIS-84 System Installation equipped with factory installed KLN-88 LORAN: LJ-1278 LJ-1288, LJ-1293, LJ-1299, LJ-1314, and LJ-1315.
Beech C90A	Equipped with Collins EFIS-84 System: LJ-1306, LJ-1316, LJ-1318, LJ-1320 through LJ-1334, LJ-1340 through LJ-1592.
Beech B200	BB-1314, BB-1449 through BB-1692 equipped with Collins EFIS-84 System.
1900D	UE-1 through UE-401.

(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 protect the blower motor circuit and reduce the possibility of the emission of smoke or a burning odor in the cockpit or passenger compartment as a result of a failed or seized blower motor.

(d) *What actions must I accomplish to address this problem for Beech Models F33A, A36, B36TC, and 58/58A airplanes?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Inspect for an installed and properly working KA-33 cooling blower, unless already accomplished.	Within the next 600 hours time-in-service (TIS) after July 20, 2001 (the effective date of this AD) or within the next 6 calendar months after July 20, 2001 (the effective date of this AD), whichever comes first.	Do this action following Raytheon Mandatory Service Bulletin SB 34-3267, Issued: March, 1999.

Actions	Compliance	Procedures
(2) If the aircraft has a KA-33 cooling blower, install a 1 ampere circuit breaker, part number (P/N) 7277-2-1, in place of the factory installed 3 ampere/5 ampere circuit breakers.	Before further flight after the inspection required in paragraph (d)(1) of this AD.	Do this action following Raytheon Mandatory Service Bulletin SB 34-3267, Issued: March, 1999.
(3) Do not install, on any affected airplane, any 3 ampere/5 ampere circuit breakers to protect the KA-33 Cooling Blower.	As of July 20, 2001 (the effective date of this AD).	Not Applicable.

(e) *What actions must I accomplish to address this problem for Beech Model C90A airplanes?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Install the in-line fuse holder, P/N HHJ-A, and install the 1-ampere slow-blow fuse, P/N MDL1, in the fuse holder, unless already accomplished.	Within the next 600 hours TIS after July 20, 2001 (the effective date of this AD) or within the next 6 calendar months after July 20, 2001 (the effective date of this AD), whichever comes first.	Do these actions following Raytheon Mandatory Service Bulletin SB 34-3269, Revision 1, Revised: October, 2000.
(2) Doing this action following Raytheon Mandatory Service Bulletin SB 34-3269, Issued: January 2000, is considered an alternative method of compliance with this AD.	Within the next 600 hours TIS after July 20, 2001 (the effective date of this AD) or within the next 6 calendar months after July 20, 2001 (the effective date of this AD), whichever comes first.	Use the procedures in Raytheon Mandatory Service Bulletin SB 34-3269, Issued: January 2000, if you use this alternative method of compliance.

(f) *What actions must I accomplish to address this problem for Beech Model B200 airplanes?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Install the in-line fuse holder, P/N HHJ-A, and install the 1-ampere slow-blow fuse, P/N MDL1, in the fuse holder, unless already accomplished.	Within the next 600 hours TIS after July 20, 2001 (the effective date of this AD) or within the next 6 calendar months after July 20, 2001 (the effective date of this AD), whichever comes first.	Do these actions following Raytheon Mandatory Service Bulletin SB 34-3269, Revision 1, Revised: October, 2000.
(2) Remove the P/N GMW-1 fuse and install the new P/N GMW-3 fuse in the Avionics Junction Box, unless already accomplished.	Within the next 600 hours TIS after July 20, 2001 (the effective date of this AD) or within the next 6 calendar months after July 20, 2001 (the effective date of this AD), whichever comes first.	Do these actions following Raytheon Mandatory Service Bulletin SB 34-3269, Revision 1, Revised: October, 2000.
(3) Doing this action following Raytheon Mandatory Service Bulletin SB 34-3269, Issued: January 2000, is considered an alternative method of compliance with this AD.	Within the next 600 hours TIS after July 20, 2001 (the effective date of this AD) or within the next 6 calendar months after July 20, 2001 (the effective date of this AD), whichever comes first.	Use the procedures in Raytheon Mandatory Service Bulletin SB 34-3269, Issued: January 2000, if you use this alternative method of compliance.

(g) *What actions must I accomplish to address this problem for Beech Model 1900D airplanes?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
Install the in-line fuse holder, P/N HHJ-A, in wire J51500E-J039002, and install the 1-ampere slow-blow fuse, P/N MDA1, in the fuse holder, unless already accomplished.	Within the next 600 hours TIS after July 20, 2001 (the effective date of this AD), or within the next 6 calendar months after July 20, 2001 (the effective date of this AD), whichever comes first.	Do these actions following Raytheon Mandatory Service Bulletin SB 34-3268, Issued: April, 2000.

(h) *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, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane with a KA-33 cooling blower 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 (h) 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.

(i) *Where can I get information about any already-approved alternative methods of compliance?* Contact Todd Dixon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent

Airport, Wichita, Kansas 67209; telephone: (316) 946-4152; facsimile: (316) 946-4407.

(j) *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.

(k) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 34-3267, Issued: March, 1999, Raytheon Mandatory Service Bulletin SB 34-3268, Issued: April, 2000, Raytheon Mandatory Service Bulletin SB 34-3269, Issued: January 2000, and Raytheon Mandatory Service Bulletin SB 34-3269, Revision 1, Revised: October, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(l) *When does this amendment become effective?* This amendment becomes effective on July 20, 2001.

Issued in Kansas City, Missouri, on May 21, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-13581 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-CE-82-AD; Amendment 39-12243; AD 2001-11-02]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft LTD Models PC-12 and PC-12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 99-17-08, which currently requires modifying the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter on certain Pilatus Aircraft Ltd. (Pilatus) Models PC-12 and PC-12/45 airplanes. This AD is the result of the Federal Aviation Administration's determination that the A250 voltage spike suppression filter in the

modification kit can cause the circuit breaker 235 to trip because of overload. In extreme circumstances, this can lead to overheating of wiring. This AD requires you to modify the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter of improved design in accordance with revised procedures. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent damage to electrical components if generator 2 is not switched off before engine shutdown and it overheats. This could result in loss of electrical power to certain critical airplane components.

DATES: This AD becomes effective on July 23, 2001.

The Director of the Federal Register approved the incorporation by reference of Pilatus Service Bulletin No. 24-014, dated October 27, 1999, as of July 23, 2001.

The Director of the Federal Register previously approved the incorporation by reference of Pilatus Service Bulletin No. 24-012, dated February 19, 1999, as of October 4, 1999 (64 FR 45149, August 19, 1999).

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH-6371 Stans, Switzerland; telephone: +41 41 619 65 09; facsimile: +41 41 610 33 51. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-82-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

The FAA issued AD 99-17-08, Amendment 39-11256 (64 FR 45149, August 19, 1999), against Pilatus models PC-12 and PC-12/45 airplanes, to prevent damage to electrical components if generator 2 is not switched off before engine shutdown and it overheats. This could result in loss of electrical power to certain critical airplane components.

AD 99-17-08 requires that you do the following on the affected airplanes:

- modify the generator 2 excitation by removing certain diodes; and
- install a new 5-amp circuit breaker and suppression filter.

AD 99-17-08 was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland.

What Has Happened Since AD 99-17-08 To Begin This Action?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, notified the FAA of the need to change AD 99-17-08. The FOCA reports that after installation of the modification kit in accordance with Pilatus Service Bulletin SB 24-012 and turning on electrical power on one of the affected airplanes, the circuit breaker CB 235 tripped.

Investigation revealed that the suppression filter (A250) (part number 524.52.12.358) was shorted. The suppression diode installed in the filter was shorted and was the wrong type. The manufacturer's A250 voltage spike suppression filter is inadequate and has been replaced with an A250 voltage spike suppression filter of improved design.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC-12 and PC-12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 5, 2001 (66 FR 13271). The NPRM proposed to supersede AD 99-17-08, Amendment 39-11256 (64 FR 45149, August 19, 1999). The NPRM also proposed to require you to modify the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter of improved design in accordance with revised procedures.

Was the Public Invited To Comment?

Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject

presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 69 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to do the modification of the generator 2 excitation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × \$60 per hour = \$480	Parts will be provided at no cost to the owners/operators of the affected aircraft.	\$480	\$33,120

If the modification of the generator 2 excitation has been done with the manufacturer's modification kit, then we estimate the following costs to remove the A250 voltage spike suppression filter and replace it with the new A250 voltage spike suppression filter:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × \$60 per hour = \$180	Parts will be provided at no cost to the owners/operators of the affected aircraft.	\$180	\$12,420

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This 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) 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 final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under 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) 99-17-08, Amendment 39-11256 (64 FR 45149, August 19, 1999), and by adding a new AD to read as follows:

2001-11-02 Pilatus Aircraft Ltd.:

Amendment 39-12243; Docket No. 99-CE-82-AD, Supersedes AD 99-17-08, Amendment 39-11256.

(a) *What airplanes are affected by this AD?* This AD affects Models PC-12 and PC-12/45 airplanes, serial numbers 101 through 289, 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 damage to electrical components if generator 2 is not switched off before engine shutdown and it overheats. This could result in loss of electrical power to certain critical airplane components.

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

Actions	Compliance	Procedures
(1) Modify the generator 2 excitation with the modification kit, part number (P/N) 500.50.12.192, which requires you to: (i) Remove certain diodes; (ii) Install a new 5-ramp circuit breaker, P/N 972.55.18.406; and (iii) Install an A250 voltage spike suppression filter, P/N 524.52.12.502, which replaces P/N 524.52.358	Within the next 100 hours time-in-service (TIS) after July 23, 2001 (the effective date of this AD), unless already done.	Do this action following the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Service Bulletin No. 24-012, dated February 19, 1999, and Service Bulletin No. 24-014, dated October 27, 1999.

Actions	Compliance	Procedures
(2) If the modification kit, part number 500.50.12.192, is already installed using the A250 voltage spike suppression filter, part number 524.52.12.358, replace only this voltage spike suppression filter with a new A250 voltage spike suppression filter, part number 524.52.12.502.	Within the next 100 hours TIS after July 23, 2001 (the effect date of this AD), unless already done.	Do this action following the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Service Bulletin No. 24-014, dated October 27, 1999.
(3) Do not install any A250 voltage spike suppression filter, part number 524.52.358, or FAA-approved equivalent part number.	As of July 23, 2001 (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.

(3) Alternative methods of compliance that were approved in accordance with AD 99-17-08 are not considered approved as alternative methods of compliance for 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 Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; 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) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Service Bulletin No. 24-012, dated February 19, 1999, and Pilatus Service Bulletin No. 24-014, dated October 27, 1999.

(1) The Director of the Federal Register approved this incorporation by reference of Pilatus Service Bulletin No. 24-014, dated October 27, 1999, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved incorporation by reference of Pilatus Service Bulletin No. 24-

012, dated February 19, 1999, as of October 4, 1999 (64 FR 45149, August 19, 1999).

(3) You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH-6371 Stans, Switzerland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on July 23, 2001.

Note 2: The subject of this AD is addressed in Swiss AD Numbers HB 99-143, dated February 19, 1999, and HB 99-542, dated October 29, 1999.

Issued in Kansas City, Missouri, on May 22, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-13580 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-CE-27-AD; Amendment 39-12245; AD 2001-11-04]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company Models 99, 99A, 99A (FACH), A99, A99A, B99, and C99 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Models 99, 99A, 99A (FACH), A99, A99A, B99, and C99 airplanes. This AD requires you to inspect all main landing gear (MLG) hydraulic actuators to determine the end cap part number that is installed, and replace any actuator that has a part number 4A125C32 end cap. This AD is the result of the potential for fatigue

cracks to develop on the MLG hydraulic actuator end caps. The actions specified by this AD are intended to eliminate existing and prevent future fatigue cracks in the MLG hydraulic actuator end caps. Such cracks could cause hydraulic fluid to leak and result in collapse of one or more gears with consequent aircraft damage and passenger injury.

DATES: This AD becomes effective on July 23, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 23, 2001.

ADDRESSES: You may get the service information referenced in this AD from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201-0085; telephone: (800) 625-7043 or (316) 676-4556. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-27-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4142; facsimile: (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received a report of an incident on a Raytheon Model C99 airplane where a cracked main landing gear (MLG) hydraulic actuator end cap resulted in nose landing gear (NLG) collapse during landing. The cracked end cap caused the hydraulic fluid to leak, which then prevented the landing gear from locking down. We have received several other reports of cracks in the MLG hydraulic actuator end caps on certain Raytheon 99 series airplanes of a similar type design.

The suspect MLG hydraulic actuator end caps are part number (P/N) 4A125C32 end caps. These end caps were originally installed on P/N 99-388001 series actuators. We have reports that these parts may also have been installed on the overhauled P/N 99-388008 series, although they are not approved for this configuration.

The P/N 99-388001 and 99-388008 series actuators are installed on Raytheon Models 99, 99A, 99A (FACH), A99, A99A, B99, and C99 airplanes.

What Are the Consequences If the Condition Is Not Corrected?

Cracked MLG hydraulic actuator end caps, if not eliminated and prevented from occurring in the future, could cause hydraulic fluid to leak and result in collapse of one or more gears with consequent aircraft damage and passenger injury.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Models 99, 99A, 99A (FACH), A99A, B99, and C99 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 2, 2000 (65 FR 65805). The NPRM proposed to require

you to inspect all MLG hydraulic actuators to determine the end cap part number that is installed with replacement of any actuator that has a part number 4A125C32 end cap.

Was the Public Invited To Comment?

Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Is There Any New Information Pertaining to This Subject?

The FAA's intent is to not affect those airplanes with mechanical landing gear installed either at manufacture or through field approval. The way the NPRM is written would make the AD applicable to all affected airplane models. We are changing the AD to only apply to those airplanes that are equipped with hydraulic landing gear.

We also realized that we inadvertently left off the Raytheon Beech Model A99 airplanes in the Applicability section of the NPRM. These airplanes were originally manufactured with mechanical landing gear, but could have hydraulic landing gear installed. Only 1 of these airplanes is currently on the U.S. Register and FAA has verified that this airplane does not have hydraulic landing gear. Therefore, adding the

Beech Model A99 to the AD will not increase the burden upon the public over that already proposed in the NPRM.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the changes described above and minor editorial corrections. We determined that these changes and minor corrections:

- Will not change the meaning of the AD; and
- Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD could affect 139 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × \$60 per hour = \$120	No parts necessary to accomplish the inspection.	\$120 per airplane	\$120 × 139 = \$16,680.

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

Labor cost	Parts cost	Total cost per airplane
4 workhours × \$60 per hour = \$240	\$1,400 for each actuator; each airplane requires 2 for a total cost of \$2,800 per airplane.	\$240 + \$2,800 = \$3,040 per airplane.

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This 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) 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 final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under 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 adding a new AD to read as follows:

2001-11-04 Raytheon Aircraft Company:

Amendment 39-12245; Docket No. 2000-CE-27-AD.

(a) *What airplanes are affected by this AD?*
This AD affects the following airplane

models and serial numbers that are certificated in any category and are equipped with hydraulic landing gear:

Model	Serial Nos.
99, 99A, 99A (FACH), A99, A99A, and B99 C99	U-1 through U-49 and U51 through U-164. U-50 and U-165 through U-239.

(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 eliminate existing and prevent future fatigue cracks in the main landing gear (MLG) hydraulic actuator end caps. Such cracks could cause hydraulic fluid to leak and result in collapse of one or more gears with consequent aircraft damage and passenger injury.

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

Actions	Compliance	Procedures
(1) Inspect all MLG hydraulic actuators to determine what part number (P/N) end caps are installed.	Within the next 200 hours time-in-service (TIS) after July 23, 2001 (the effective date of this AD), unless already accomplished.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 2290, Rev. 1, Revised: August, 1999.
(2) If a P/N 4A211S1 (or FAA-approved equivalent part number) end cap is installed on both actuators, then no additional action is required by this AD.	AD is complied with	AD is complied with.
(3) If a P/N 4A125C32 (or FAA-approved equivalent part number) end cap is installed on a P/N 99-388001 series actuator, accomplish the following: (i) Inspect, using fluorescent penetrant methods, each end cap for evidence of cracking; (ii) Replace each actuator with an actuator that has a P/N 4A211S1 (or FAA-approved equivalent part number) end cap; and (iii) This replacement may be accomplished prior to 600 hours TIS, but must be replaced if evidence of cracking is found.	Accomplish the inspection prior to further flight after the inspection required by paragraph (d)(1) of this AD and thereafter at intervals not to exceed 200 hours TIS until the end caps are replaced. Accomplish the replacement prior to further flight after the inspection where any evidence of cracking is found or within 600 hours TIS after July 23, 2001 (the effective date of this AD), if no evidence of cracking is found.	In accordance with Part I, steps (2) through (10) and Part II, of the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 2290, Rev. 1, Revised: August, 1999.
(4) If a P/N 4A125C32 (or FAA-approved equivalent part number) end cap is installed on a P/N 99-388008 series actuator, replace the actuator with an actuator that has a P/N 4A211S1 (or FAA-approved equivalent part number) end cap.	Prior to further flight after the inspection required by this AD.	In accordance with Part I, steps (2) through (10) and Part II, of the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 2290, Rev. 1, Revised: August, 1999.
(5) Do not install, on any affected airplane, a P/N 99-388008 series actuator that incorporates an end cap that is not P/N 4A211S1 (or FAA-approved equivalent part number).	As of July 23, 2001, (the effective date of this AD).	Not Applicable.
(6) Do not install, on any affected airplane, a P/N 99-388001 series actuator that incorporates an end cap that is not P/N 4A211S1 (or FAA-approved equivalent part number).	As of 600 hours TIS after July 23, 2001 (the effective date of this AD) provided the 200-hour repetitive inspections required by this AD are accomplished and no evidence of cracking is found. If evidence of cracking is found, the actuator must be immediately replaced with one that incorporates P/N 4A211S1 (or FAA-approved equivalent part number).	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, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who

may add comments and then send it to the Manager, Wichita ACO.

Note: 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 Paul C. DeVore, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4142; facsimile: (316) 946-4407.

(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) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 2290, Rev. 1, Revised: August, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201-0085. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on July 23, 2001.

Issued in Kansas City, Missouri, on May 22, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-13579 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-144-AD; Amendment 39-12253; AD 2001-11-10]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8-400 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 certain Bombardier Model DHC-8-400 series airplanes. This action requires revising the Normal and Abnormal Sections of the FAA-approved Airplane Flight Manual to include procedures that enable the flightcrew to determine if the main landing gear (MLG) is extended before landing and to take appropriate actions, if necessary. The actions specified in

this AD are intended to ensure that the flightcrew is advised of a potential gear-up landing due to misleading indications of the MLG extension, and has the procedures necessary to address that potential condition. This action is intended to address the identified unsafe condition.

DATES: Effective June 21, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-144-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-iarccomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-144-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.

Information pertaining to the amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Dan Parillo, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7505; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC-8-400 series airplanes. TCCA advises that downlock proximity sensors of the main landing gear (MLG) may fail concurrently on the same gear. Such failure of the sensors could result in the failure of the MLG to extend and the flightcrew to receive misleading indications that the MLG has extended.

Issuance of a Canadian Airworthiness Directive

TCCA has issued Canadian airworthiness directive CF-2001-16,

dated April 11, 2001, that describes an additional in-flight procedure to the airplane flight manual (AFM). The in-flight procedure describes certain cautions and warnings for performing an alternate landing gear extension; visually inspecting the MLG to confirm that it has been extended; inserting a hydraulic pump handle in socket and operating for a minimum of 12 full strokes and ensuring resistance to pump handle movement; and observing that the LEFT gear safe (green) and RIGHT gear safe (green) advisory lights are illuminated; and the LEFT gear unsafe (red) and RIGHT gear unsafe (red) and the landing handle (amber) advisory lights are extinguished. TCCA has issued the Canadian airworthiness directive in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in 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, has kept the FAA informed of the situation described above. The FAA has examined the findings of the TCCA, 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 ensure that the flightcrew is advised of the potential of a landing with the MLG up due to misleading indications of the extension of the MLG, and has the appropriate AFM procedures necessary to address it. This AD requires a revision of the Normal and Abnormal Sections of the FAA-approved AFM as specified in the Canadian airworthiness directive described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

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 2001-NM-144-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, 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:

2001-11-10 Bombardier, Inc.: Amendment 39-12253. Docket 2001-NM-144-AD.

Applicability: Model DHC-8-400 series airplanes, serial numbers 4002 and subsequent, certificated in any category.
Compliance: Required as indicated, unless accomplished previously.

To prevent landing with the main landing gear (MLG) up due to failure of the downlock proximity sensors of the MLG, accomplish the following:

Airplane Flight Manual (AFM) Revision

- (a) Within 14 days after the effective date of this AD, revise the Normal and Abnormal Sections of the FAA-approved AFM by inserting the following into Section 4.21, opposite page 4.21.1. This may be accomplished by inserting a copy of this AD in the AFM.

"CAUTION

If illumination of LEFT gear safe (green), and LEFT gear unsafe (red), and landing gear handle (amber) advisory lights with the landing gear handle in the up position.

Or

Illumination of RIGHT gear safe (green), and RIGHT gear unsafe (red), and landing gear handle (amber) advisory lights with the landing gear handle in the up position.

1. Perform an Alternate Landing Gear extension, See paragraph 4.21.

WARNING

Selection of the gear down without following the Alternate Landing Gear Extension procedure may result in the affected gear being trapped inside the nacelle.

2. Visually inspect Main Landing Gear to confirm that it has been extended.

WARNING

A down and locked indication of the affected main landing gear is not a valid indication of the gear position.

3. Insert hydraulic pump handle in socket and operate for a minimum of 12 full strokes and ensure resistance to pump handle movement.

4. Observe the LEFT gear safe (green) and RIGHT gear safe (green) advisory lights are illuminated and the LEFT gear unsafe (red) and RIGHT gear unsafe (red) and the landing handle (amber) advisory lights are extinguished."

Alternative Methods of Compliance

(b) 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, New York 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, New York ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF-2001-16, dated April 11, 2001.

- (d) This amendment becomes effective on June 21, 2001.

Issued in Renton, Washington, on May 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-13995 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-CE-121-AD; Amendment 39-12255; AD 2000-25-02 R1]

RIN 2120-AA64

Airworthiness Directives; American Champion Aircraft Corporation 7, 8, and 11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment clarifies information contained in Airworthiness Directive (AD) 2000-25-02, which concerns certain American Champion Aircraft Corporation (ACAC) 7, 8, and 11 series airplanes. This AD currently requires inspecting the front and rear wood spars for damage, including installing any as-needed inspection holes; and repairing or replacing any damaged wood spar. We incorrectly referenced the initial inspection compliance time of this AD as "whichever occurs later." The notice of proposed rulemaking (NPRM) contained the correct reference of "whichever occurs first." This action revises the AD to reflect the correct reference in the compliance time. The actions specified by this AD are intended to detect and repair or replace damaged wood wing spars. Continued operation with such damage could progress to in-flight structural failure of the wing with consequent loss of control of the airplane.

EFFECTIVE DATE: The effective date of this AD is July 13, 2001.

The Director of the Federal Register previously approved the incorporation by reference of American Champion Aircraft Corporation (ACAC), Service Letter 406, Revision A, dated May 6, 1998, as of January 19, 2001 (65 FR 78905, December 18, 2000).

ADDRESSES: You may get service information referenced in this AD from the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address: www.amerchampionaircraft.com. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-121-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the

Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Rohder, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294-7697; facsimile: (847) 294-7834.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? A review of the service history of ACAC 7, 8, and 11 series airplanes that incorporate wood wing spars caused FAA to issue AD 2000-25-02, Amendment 39-12036 (65 FR 78905, December 18, 2000), which applies to certain American Champion Aircraft Corporation (ACAC) 7, 8, and 11 series airplanes. The AD currently requires inspecting the front and rear wood spars for damage, including installing any as-needed inspection holes; and repairing or replacing any damaged wood spar.

What has happened since AD 2000-25-02 to initiate this action? The compliance time of the initial inspection of AD 2000-25-02 is written as at the first annual inspection that occurs 30 calendar days or more after the effective date of the AD or within 13 calendar months after the effective date of the AD, whichever occurs later. We incorrectly referenced this compliance time as "whichever occurs later." The notice of proposed rulemaking (NPRM) (64 FR 29972, June 4, 1999) contained the correct reference of "whichever occurs first."

What has FAA determined? Consequently, FAA has determined that AD 2000-25-02 should be revised to ensure that the inspections and necessary replacements are accomplished in a timely manner.

Correction of Publication

What is the intent of this action? This document clarifies the intent of the compliance time by changing the "whichever occurs later" reference of the initial compliance time of AD 2000-25-02 to "whichever occurs first." This document also adds the amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

This action only clarifies the intent of AD 2000-25-02 and makes a change to reflect what was originally proposed. It has no adverse economic impact and imposes no additional burden on any person than would have been necessary to accomplish the AD. Therefore, FAA has determined that prior notice and

opportunity for public comment are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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) 2000-25-02, Amendment 39-12036 (65 FR 78905, December 18, 2000), and by adding a new AD to read as follows:

2000-25-02 R1 American Champion Aircraft Company (ACAC): Amendment 39-12255; Docket No. 98-CE-121-AD; Revises AD 2000-25-02, Amendment 39-12036; which superseded AD 98-05-04, Amendment 39-10365 (63 FR 10297, March 3, 1998).

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models, all serial numbers, certificated in any category, that are equipped with wood wing spars:

(1) Group 1 airplanes: ACAC Models 7AC, 7ACA, S7AC, 7BCM (L-16A), 7CCM (L-16B), S7CCM, 7DC, S7DC, 7EC, S7EC, 7FC, 7JC, 11AC, S11AC, 11BC, S11BC, 11CC, and S11CC airplanes that have not been modified to incorporate an engine with greater than 90 horsepower.

(2) Group 2 airplanes: ACAC Models 7ECA, 7GC, 7GCA, 7GCAA, 7GCB, 7GCB, 7GCB, 7HC, 7KC, 7KCB, 8GCB, and 8KCB airplanes; and any of the airplane models referenced in paragraph (a)(1) of this AD that have been modified to incorporate an engine with greater than 90 horsepower.

(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 repair or replace damaged wood wing spars. Continued operation with such cracks and damage could progress to an in-flight structural failure of the wing with consequent loss of control of the airplane.

(d) *What actions must be accomplished on all Group 1 airplanes to address this problem?* For any Group 1 airplane as referenced in paragraph (a)(1) of this AD, the following must be accomplished to address the problem:

Action	Compliance time	Procedures
(1) Inspection Requirements: Inspect (detailed visual) the entire length of the front and rear wood wing spars for cracks, compression cracks, longitudinal cracks through the boltholes or nail holes, or loose or missing rib nails. We will refer to these conditions as damage throughout the rest of this section.	Initially inspect at the first annual inspection that occurs 30 calendar days or more after July 13, 2001 (the effective date of this AD revision) or within the next 13 calendar months after January 19, 2001 (the effective date of AD 2000-25-02), whichever occurs first.	Accomplish in accordance with the instructions in ACAC Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies as an FAA-approved inspection option using a high-intensity flexible light (e.g., "Bend-A-Light"). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.
(2) Additional Inspection Requirements: If, after January 19, 2001 (the effective date of AD 2000-25-02), any airplane is involved in an accident/incident that involves wing damage (e.g., wing surface deformations such as abrasions, gouges, scratches, or dents, etc.) accomplish the inspection required in paragraph (d)(1) of this AD.	Prior to further flight after each accident/incident that involved wing damage.	Accomplish in accordance with the instructions in ACAC Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies as an FAA-approved inspection option using a high-intensity flexible light (e.g., "Bend-A-Light"). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.
(3) Replacement Requirements: If any damage is found during any inspection required by this AD, repair or replace the wood spar.	Prior to further flight after the inspection where the damage is found.	In accordance with Advisory Circular (AC) 43.13-1B, Acceptable Methods, Techniques, and Practices; or other data that is FAA-approved for wing spar repair or replacement.
(4) Reporting Requirements: If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010-4, to the FAA.	Within 10 days after the inspection where the damage was found or within 10 days after January 19, 2001 (the effective date of AD 2000-25-02), whichever occurs later..	Mail the information to: FAA, Chicago Aircraft Certification Office (ACO), Attention: Docket No. 98-CE-121-AD, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; facsimile: (847) 294-7834. You may also file electronically as discussed in this AD.
(i) Include the airplane model and serial number, the extent of the damage (location and type), and the number of total hours time-in-service (TIS) on the damaged wing.		
(ii) You may submit M or D reports electronically by accessing the FAA AFS-600 web page at http://www.mmac.jccbi.gov/afs/afs600 . Because you will lose access to the report once you electronically submit it, we recommend that you print two copies prior to submitting the report and forward one to the Chicago ACO and keep the other for your records.		
(iii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (14 U.S.C. 3501 et seq.). The OMB assigned this approval Control Number 2120-0056.		

(e) *What actions must be accomplished on all Group 2 airplanes to address this problem?* For any Group 2 airplane as referenced in paragraph (a)(2) of this AD, the following must be accomplished to address the problem:

Action	Compliance time	Procedures
(1) Inspection Requirements: Inspect (detailed visual) the entire length of the front and rear wood wing spars for cracks, compression cracks, longitudinal cracks through the boltholes or nail holes, or loose or missing rib nails. We will refer to these conditions as damage throughout the rest of this section.	Initially inspect at the first annual inspection that occurs 30 calendar days or more after July 13, 2001 (the effective date of this AD revision) or within the next 13 calendar months after January 19, 2001 (the effective date of AD 2000-25-02), whichever occurs first. Repetitively inspect thereafter at intervals not to exceed 500 hours time-in-service (TIS) or 12 calendar months, whichever occurs first.	Accomplish in accordance with the instructions in American Champion Aircraft Corporation (ACAC) Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies an FAA-approved inspection option using a high-intensity flexible light (e.g., "Bend-A-Light"). A regular flashlight must not be used for this portion of the inspection. Alternative FAA approved inspection options are listed in this service bulletin.

Action	Compliance time	Procedures
(2) Additional Inspection Requirements: If, after January 19, 2001 (the effective date of AD 2000-25-02), any airplane is involved in an accident/incident that involves wing damage (e.g., wing surface deformations such as abrasions, gouges, scratches, or dents, etc.), accomplish the inspection required in paragraph (e)(1) of this AD.	Prior to further flight after each accident/incident that involved wing damage.	Accomplish in accordance with the instructions in American Champion Aircraft Corporation (ACAC) Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies an FAA-approved inspection option using a high-intensity flexible light (e.g., "Bend-A-Light"). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.
(3) Replacement Requirements: If any damage is found during any inspection required by this AD, repair or replace the wood spar.	Prior to further flight after the inspection where the damage is found.	In accordance with Advisory Circular (AC) 43.13-1B, Acceptable Methods, Techniques, and Practices; or other data that is FAA-approved for wing spar repair or replacement.
(4) Reporting Requirement: If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010-4, to the FAA.	Within 10 days after the inspection where the damage was found or within 10 days after January 19, 2001 (the effective date of AD 2000-25-02), whichever occurs later.	Mail the information to: FAA, Chicago Aircraft Certification Office (ACO), Attention: Docket 98-CE-121-AD, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; facsimile: (847) 294-7834. You may also file electronically as discussed in this AD.
(i) Include the airplane model and serial number, the extent of the damage (location and type), and the number of total TIS on the damaged wing.		
(ii) You may submit M or D reports electronically by accessing the FAA AFS-600 web page at http://www.mmac.jccbi.gov/afs/afs600 . Because you will lose access to the report once you electronically submit it, we recommend printing two copies prior to submitting the report and forward one to the Chicago ACO and keep the other for your records.		
(iii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (14 U.S.C. 3501 et seq.). The OMB assigned this approval Control Number 2120-0056.		

(f) *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, Chicago Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) ACAC Service Letter 406, Revision A, and ACAC Service Letter 417, Revision C, both dated May 6, 1998, specify additional inspection and installation alternatives over that included in the original issue of these service letters. All inspection and installation alternatives presented in these service letters are acceptable for accomplishing the applicable actions of this AD.

(3) Alternative methods of compliance approved in accordance with AD 2000-25-02 and AD 98-05-04 are approved as alternative methods of compliance for this AD.

Note: 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294-7697; facsimile: (847) 294-7834.

(h) *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.

(i) *Are any service bulletins incorporated into this AD by reference?* The inspections required by this AD must be done in

accordance with American Champion Aircraft Corporation (ACAC), Service Letter 406, Revision A, dated May 6, 1998. The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51, as of January 19, 2001 (65 FR 78905, December 18, 2000). You can get copies from the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address:

"www.amerchampionaircraft.com". You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *Are other AD's affected by this action?* This amendment revises AD 2000-25-02, Amendment 39-12036; which superseded AD 98-05-04, Amendment 39-10365.

(k) *When does this amendment become effective?* This amendment becomes effective on July 13, 2001.

Issued in Kansas City, Missouri, on May 30, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-14143 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125 and 135

Exemptions and Exceptions for Flight Data Recorder Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Statement of policy.

SUMMARY: This document identifies the current FAA policies regarding requests for exemption or exception from the operating rules governing the use of flight data recorders in either fixed-wing aircraft or rotorcraft. The final compliance date for the 1997 rule changes and policy changes adopted in 1997 is August 20, 2001. The Federal Aviation Administration (FAA) is publishing this document to provide guidance to operators that have applied or expect to apply for an exemption or exception from the flight data recorder requirements of any operating part.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Swancy, Special Assistant to the Director (AFS-3), Flight Standards Service, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8237.

SUPPLEMENTARY INFORMATION:

Background

In 1997, the Federal Aviation Administration promulgated new operational regulations for flight data recorders (FDRs) (62 FR 38362, July 17, 1997). At that time, the agency also withdrew a previous information bulletin that stated policy regarding earlier FDR regulations.

Following the publication of the rule and policy statement, the FAA began to receive requests for exemption from the regulations. The FAA uses the term *exemption* to refer to temporary relief from a regulation as granted to a specific petitioner. The FAA is currently reviewing all requests and exemptions in effect regarding FDRs to determine whether they will be made permanent, rescinded, or allowed to expire in the final compliance date, August 20 of this year.

When the 1997 rule was promulgated, the FAA included in § 121.344(l)(2),

§ 121.344a(f), § 125.226(l)(2), and § 135.152(k) those aircraft models that the FAA found were too old, too few, and too expensive to upgrade and still be economically viable to operate. These aircraft were excepted from the FDR requirements and have permanent relief from compliance with the FDR regulations of the applicable section. The FAA indicated that if operators found that additional aircraft models should be considered for permanent exception, a petition for rulemaking that included full support for the exception request should be submitted. Since that time, there have been a considerable number of requests filed.

Following this paragraph is a list of the minimum information necessary to be submitted for *each aircraft model requesting an exception*. Petitioners that already have submitted petitions should review this list and consider supplementing their petitions if they have not previously provided the necessary information. The FAA will consider any information submitted and determine whether more information is necessary for the agency to make a decision whether it is appropriate to propose exception status for a particular aircraft model. Petitioners are cautioned that exception status should *not* be considered automatic when information is submitted, nor should any grant of a temporary exemption from the FDR requirements while an exception request is pending be used to presume that permanent exception status will be granted. This applies to exemptions already issued that expire after August 20, 2001, as well. The FAA anticipates that some aircraft models that have been granted exemptions may not qualify for exception status, and will have to be modified to fully comply with the applicable regulations.

- Is this model currently in production?
- What other models are currently in production (or not in production) that are similar to this model?
- If this model is not currently in production, is there another model that is similar in a way that would facilitate this model's adaptability for FDR retrofit?
- How many aircraft of this model were produced by the manufacturer? How many of similar models?
- How many are still in operation in the United States? How many worldwide?
- Does a supplemental type certificate (STC) exist to retrofit this model (or a similar model) with the required flight data recorder equipment?
- If no STC exists, what is the expected detailed cost to develop a

digital flight data recorder (DFDR) STC for this model? Provide the source of your estimates, including a person who the FAA may contact for verification. Estimates that do not include support from a person or organization qualified to make the estimate will not be accepted.

- What is the expected cost of STC installation per aircraft? Provide a source of information as discussed above.
- What is the estimated downtime per aircraft to install the required equipment? Provide a source for your information as discussed above.
- Operator estimate of cost of aircraft downtime per week for retrofit.
- Costs may be estimated as a range but must be noted as to how the range was established.
- Other information specific to an individual petition for rulemaking may be requested by the agency based on the circumstances presented.

Although only one complete petition for exception need be submitted for each model aircraft, operators are advised not to rely on the submissions of other operators that are seeking relief for the same or similar model aircraft. The FAA will accept materials from petitioners jointly, but will not assemble material from separate petitions to make a complete case for a particular aircraft model.

Petitioners should also be precise as to what requirements they are seeking relief from. No petitioner may expect that exemption or exception status will allow them to remove operational FDR equipment. For example, if an airplane meets the current FDR regulations but petitions for relief from the upgrades required by the 1997 rules, only upgrade relief will be considered. The current regulations must continue to be met, and all installed equipment must continue to be used and maintained according to the regulations. Further, these aircraft should not be presumed to be expected from future changes to the regulations.

Those submitting petitions for rulemaking to seek exception to the FDR requirements should submit the required information to the following: (1) For paper submissions, send the original signed copy of your petition for rulemaking to U.S. Department of Transportation, Docket Management System, 400 7th Street, SW., Room PL 401, Washington, DC 20591-0001; or (2) For electronic submissions, submit your petition to FAA through the Internet using the Docket Management System web site at this Internet address: <http://dms.dot.gov/>.

Recent Concerns

Since the time petitioners first requested that other aircraft be excepted from the applicable FDR regulations, the FAA has learned of at least two circumstances that will affect the way exception requests are analyzed. First, after the initial exemptions were granted, the FAA was informed that operators of exempted aircraft actively sought out more aircraft of these models from overseas and brought them into the United States. Those operators already held exemptions from the FDR regulations for those models, and therefore, believed that those models should be included in their original exemptions. This situation weakens the argument for exception status in at least two ways. First, the greater number of aircraft allows the cost of retrofit to be spread across additional aircraft, reducing the per-aircraft retrofit cost. Second, it lessens any public interest argument an operator may have by increasing the number of aircraft allowed to operate without FDRs. The presence of FDRs has been well established as being in the public interest and an important source of information on accidents and incidents.

The FAA always intended exception status to be very limited. The agency was and remains concerned that older aircraft of which few are left operating under limited circumstances not be denied what use might be left in them. Large numbers of aircraft with considerable economic viability were never meant to be the subject of exception status. For this reason, the FAA will take into account all aircraft worldwide for any model submitted for exception status.

The second circumstance concerns the practice of routinely adding and removing the same aircraft from the registries of the United States and other countries for benefit. The language added to § 135.152 in 1988 was specific in its intent of capturing all aircraft that were brought onto the U.S. register after October 11, 1991, primarily to stop the continued importation of older aircraft that would not need FDRs if the rule had instead used a date of manufacture. In 1997, that provision was expanded to include aircraft that were added to U.S. operations specifications (under foreign registry) after that date. Some of these aircraft were affected by the information bulletin that the agency withdrew in 1997; it was only after withdrawal that the FAA learned that several operators were using the information bulletin, combined with the practice of swapping airplanes between registries, to gain a benefit. The information bulletin

presumed to grandfather any aircraft that had once been registered in the United States from the "brought on the U.S. register" language of § 135.152. Once that information bulletin was withdrawn as being in distinct conflict with the clear language and intent of the rule, the FAA indicated that all persons operating under it had 4 years to bring their aircraft into compliance. It was then that the FAA began to receive numerous requests for exception status. Operators are cautioned that all circumstances will be examined closely. Exception status will most likely *not* be proposed by the FAA when a significant number of any model is still operating. Nor does the fact that an aircraft model is no longer being manufactured automatically mean that exception status will be proposed.

The FAA has been sensitized to the situation that has resulted in distinct benefits being gained by some operators in manipulating the status of their aircraft while the FDR regulations were in flux. The loss of this benefit will not be considered in deciding whether an aircraft model is appropriate for relief from the FDR requirements. This is especially true for aircraft models that have never been brought into compliance with the regulations promulgated in 1988.

Conclusion

All operators are reminded that the compliance date for the 1997 regulations to upgrade FDRs is August 20, 2001. Similarly, aircraft that were affected by the withdrawal of the Flight Standards Information Bulletin in 1997 had the same 4 years to upgrade their aircraft to meet § 135.152. Given the considerable notice of these requirements provided by the final rule, the FAA does not intend to issue exemptions from that date except in the most limited, temporary circumstances, where fully justified. Request for exemption based on lack of installation data (i.e., no STC for their aircraft), parts availability, or generalized plans to retire aircraft will not be granted.

Issued in Washington, DC on May 31, 2001.

Nicholas Sabatini,

Director, Flight Standards Service.

[FR Doc. 01-14176 Filed 6-1-01; 3:30 pm]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 275

[Release Nos. IC-24991 and IA-1945; File No. S7-06-01]

RIN 3235-A105

Electronic Recordkeeping by Investment Companies and Investment Advisers; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule, which was published on Wednesday, May 30, 2001 (66 FR 29224). This rule relates to electronic recordkeeping by investment companies and investment advisers. In FR Document No. 01-13526 beginning on page 29224 for Wednesday, May 30, 2001, the docket line contains an error. The docket line is correct as set forth above.

EFFECTIVE DATE: May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Frances Sienkiewicz at (202) 942-7072.

Dated: May 31, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-14218 Filed 6-5-01; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 00P-1275 and 00P-1276]

Food Labeling: Health Claims; Plant Sterol/Stanol Esters and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; notice of extension of period for issuance of final rule.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 25, 2001, the period for issuance of a final rule in response to its interim final rule of September 8, 2000, entitled "Food Labeling: Health Claims; Plant Sterol/Stanol Esters and Coronary Heart Disease." FDA's regulations require the agency to issue a notice of such extension if it finds, for cause, that it is unable to issue a final rule within 270 days from the date of publication of the

interim final rule. The complexity of the issues raised by the comments to the interim final rule and the lack of agency resources to complete the final rule within the specified 270 days have persuaded the agency of the need to extend the deadline to publish the final rule.

FOR FURTHER INFORMATION CONTACT:

James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS-832), 200 C St. SW., Washington, DC 20204, 202-205-5372.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 22, 1997 (62 FR 28230), FDA published a final rule amending § 101.70 (21 CFR 101.70) of its regulations to provide a timeframe in which it will issue, in rulemakings on health claims, final rules announcing whether it will authorize the use of the claim at issue and to provide for extensions of that timeframe for cause. In that final rule, FDA adopted § 101.70(j)(4)(i), which provides that within 270 days of the date of publication of a proposal to authorize a health claim, the agency will publish a final rule that either authorizes the use of a health claim or explains why the agency has decided not to authorize one. FDA also adopted § 101.70(j)(4)(ii), which provides that, for cause, the agency may extend, no more than twice, the period in which it will publish a final rule and that each such extension will be for no more than 90 days. This regulation further requires that FDA publish a notice of any such extension in the **Federal Register**, and that it explain in that notice the basis for the extension, the length of the extension, and the date by which the final rule will be published (§ 101.70(j)(4)(ii)).

In the **Federal Register** of May 14, 1998 (63 FR 26717), FDA published a final rule that, in part, amended § 101.70 in response to section 302 of the Food and Drug Administration Modernization Act of 1997 (FDAMA). Section 302 of FDAMA amended section 403(r)(4)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(4)(A)(i)) to provide, in part, that if FDA initiates rulemaking in response to a health claim petition, the agency must complete the rulemaking within 540 days of receipt of the petition. If FDA does not meet the 540-day deadline, FDAMA requires FDA to provide the relevant House and Senate legislative committees with the reasons for failing to do so. Accordingly, FDA amended § 101.70(j)(4)(ii) to state that any extensions of the final rule deadline in health claim rulemakings shall not cause the deadline to exceed 540 days from receipt of the petition. FDA noted

that, depending upon how much time the agency uses to file a petition and publish a proposed rule in response to it, the agency may be limited to only one extension under § 101.70(j)(4)(ii), and the extension may be limited to fewer than 90 days (63 FR 26717 at 26718).

In the **Federal Register** of September 8, 2000 (65 FR 54686), FDA published an interim final rule adding 21 CFR 101.83 to authorize the use, on food labels and in food labeling, of health claims on the association between plant sterol/stanol esters and reduced risk of coronary heart disease (CHD) (plant sterol/stanol esters interim final rule). The act, as amended by FDAMA, authorizes FDA to make proposed health claim regulations effective upon publication pending consideration of public comment and publication of a final regulation, if the agency determines that such action is necessary for public health reasons (see section 403(r)(7) of the act). The legislative history of FDAMA indicates that such proposed regulations should be issued as interim final rules (H. Conf. Rept. 105-399, at 98 (1997)). Because the plant sterol/stanol esters interim final rule was issued under FDA's authority to make a proposed rule effective upon publication (see 65 FR 54685 at 54713), it was subject to the deadline for proposed rules in § 101.70(j)(3). Likewise, the final rule deadline in § 101.70(j)(4) applies to this rulemaking.

In the plant sterol/stanol esters interim final rule, the agency presented the rationale for a health claim on this food-disease relationship under the standard in section 403(r)(3)(B)(i) of the act and 21 CFR 101.14(c) of FDA's regulations. The agency concluded that, based on the totality of the publicly available scientific evidence, plant sterol/stanol esters may reduce the risk of CHD. The interim final rule specified the daily intake levels of plant sterol and stanol esters associated with reduced risk of CHD, the categories of foods eligible to bear the plant sterol/stanol esters health claim, and analytical methods for assessing compliance with qualifying criteria for the claim.

The comments received in response to the plant sterol/stanol esters interim final rule raised numerous complex issues. For example, we received many comments urging the agency to broaden the categories of foods eligible to bear the plant sterol/stanol esters health claim. Many comments also argued that the daily intake level for plant stanol esters should be the same as for plant sterol esters. Another group of comments requested that FDA allow

foods containing the nonesterified form of plant sterols/stanols to bear the health claim.

The complex issues raised by these comments warrant significant attention and the expenditure of significant staff resources. Unfortunately, the Office of Nutritional Products, Labeling, and Dietary Supplements (ONPLDS) within FDA's Center for Food Safety and Applied Nutrition has had to focus a large part of its health claim review resources on litigation-related work since the issuance of the plant sterol/stanol esters interim final rule. (ONPLDS is also the office responsible for reviewing all health claim petitions.) FDA's review of these comments, therefore, has been hampered by a lack of staff available to examine the scientific evidence pertaining to these complex issues. Accordingly, an extension of time to complete the plant sterol/stanol esters final rule is needed.

To publish a final rule regarding a health claim for plant sterol/stanol esters and CHD within 270 days of the date of publication of the interim final rule, which was on September 8, 2000, the agency would have to publish the final rule on or before June 5, 2001. However, because of the need to provide for additional time for agency staff to evaluate the issues raised by the comments on the plant sterol/stanol esters interim final rule, FDA hereby gives notice that there is cause to extend the deadline for publication of the final rule by 50 days. FDA will, therefore, publish a final rule in response to the interim final rule on or before July 25, 2001.

The new deadline of July 25, 2001, falls within the 540-day limit set by the statute. As noted above, section 403(r)(4)(A)(i) of the act requires FDA to complete health claim rulemakings within 540 days of the receipt of the petition. Since the current rulemaking involves two separate health claim petitions, submitted by Lipton and McNeil Consumer Healthcare, that have been combined into one rulemaking, the agency will consider the date of receipt of the earlier petition for purposes of calculating the deadline. Lipton submitted its health claim petition on February 1, 2000; McNeil submitted its petition on February 15, 2000. Publication of a final rule on or before July 25, 2001, will allow the agency to complete this rulemaking within 540 days of the receipt of the earlier (Lipton's) petition.

Dated: May 31, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01-14285 Filed 6-5-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07-01-042]

RIN 2115-AE46

Special Local Regulations; Gulf of Mexico, Sarasota, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the special local regulation for the Suncoast Offshore Challenge in Sarasota, FL. The sponsor of the event recently changed the event date. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 10 a.m. June 30, 2001 to 5 p.m. June 30, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD07-01-042 and are available for inspection or copying at Commander, Coast Guard Group St. Petersburg, 600 8th Avenue, S.E., St. Petersburg, FL 33701, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Steven Stewart, Coast Guard Group St. Petersburg, Florida at (727) 824-7553.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is unnecessary and contrary to public safety interests because immediate action is needed to protect the public and because this temporary rule modifies an existing published regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is because entry into the regulated area will only be prohibited

for approximately six hours on the day of the event, and traffic will be able to safely pass around the race area. Additionally, delaying the effective date would be contrary to the public interest because it is needed on the day of the event in order to protect the safety of the race participants and the general public.

Background and Purpose

The Suncoast Offshore Racing Association is sponsoring a sanctioned American Power Boat Association Offshore Event, with approximately 100 power boats, ranging in length from 21 to 50 feet participating in the 2001 Suncoast Offshore Challenge. The race will take place in the Gulf of Mexico off Sarasota, FL on June 30, 2001. There will also be approximately two hundred (200) spectator craft. A Special Local Regulation exists at 33 C.F.R. 100.719 for this event, which is usually held in July. However, the sponsor changed the date for this year. These regulations are intended to promote safe navigation on the waters of Sarasota Bay by controlling the traffic entering, exiting, and traveling within the regulated area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only approximately seven hours on the day of the event and traffic can safely pass around the race area.

Small Entities

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

This special local regulation will not have a significant economic impact on a substantial number of small entities

for the following reasons. This regulation will only be in effect a total of one day, for six hours on the day of the event. Further traffic can safely pass around the regulated area.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-221), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2-1, paragraph 34(h) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Temporarily suspend § 100.719 and add temporary § 100.35T-07-042 to read as follows:

§ 100.35T-07-042 Annual Suncoast Offshore Challenge; Gulf of Mexico, Sarasota, FL.

(a) *Regulated Area:* The regulated area is established by a line drawn from the start/finish position 27°19.15'N, 082°35.90'W, thence to position 27°18.81'N, 082°34.90'W, thence to position 27°18.21'N, 082°34.48'W, thence to position 27°16.43'N, 082°34.99'W, thence to position 27°15.70'N, 082°34.29'W, thence to position 27°15.86'N, 082°33.44'W, thence to position 27°14.73'N, 082°32.37'W, thence to position 27°14.62'N, 082°32.54'W, thence to position 27°14.94'N, 082°35.25'W, thence to position 27°20.03'N, 082°37.38'W, thence to position 27°20.32'N, 082°37.16'W, thence back to the start/finish position. All coordinates referenced use datum: NAD 1983.

(b) *Special local regulations.*

(1) No anchoring will be permitted seaward of the shoreside boundaries of the regulated area out to three nautical miles from shore, the 10 a.m. to 5 p.m. EDT, on June 30, 2001.

(2) Anchoring for spectators will be permitted shoreward of the shoreside boundaries of the regulated area.

(3) All vessel traffic, not involved with the Suncoast Offshore Challenge, exiting New Pass between 11 a.m. and 4 p.m. EDT shall exit at New Pass Channel daybeacon #3 (27°26.46'N, 082°41.7'W, LLNR 18100) and #4 (27°26.4'N, 082°41.68'W, LLNR 18105), and shall proceed in a northerly direction shoreward of spectator craft taking action to avoid a close-quarters situation until finally past and clear of the racecourse. All coordinates referenced use datum: NAD 1983.

(4) Big Sarasota Pass will be closed to all inbound and outbound vessel traffic, other than spectator craft, from 10 a.m. to 5 p.m. EDT.

(5) Entry into the regulated area shall be in accordance with this regulation. Spectator vessels shall stay clear of race area at all times.

(c) *Effective Dates.* This rule is effective 10 a.m. EDT June 30, 2001 until 5 p.m. EDT June 30, 2001.

Dated: May 24, 2001.

G.W. Sutton,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.
[FR Doc. 01-14230 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07-01-043]

RIN 2115-AE46

Special Local Regulations; Sarasota Bay, Sarasota, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the special local regulation for the Suncoast Kilo Run in Sarasota, FL. The sponsor of the event recently changed the event date. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 8 a.m. June 29, 2001 to 1 p.m. June 29, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD07-01-043 and are available for inspection or copying at Commander, Coast Guard Group St. Petersburg, 600 8th Avenue, SE., St. Petersburg, FL 33701, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Steven Stewart, Coast Guard Group St. Petersburg, Florida at (727) 824-7553.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is unnecessary and contrary to public safety interests because immediate action is needed to protect the public and because this temporary rule only modifies an existing published regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is because entry into the regulated area will only be prohibited for approximately five hours on the day of the event, and traffic will be able to safely pass around the race area. Additionally, delaying the effective date would be contrary to the public interest because it is needed on the day of the event in order to protect the safety of the race participants and the general public.

Background and Purpose

The Suncoast Offshore Racing Association is sponsoring a sanctioned American Power Boat Association World Record Kilo Event, with approximately 50 power boats, ranging in length from 21 to 50 feet participating in the 2001 Suncoast Kilo Run. The race will take place in Sarasota Bay on June 29, 2001. There will also be approximately two hundred (200) spectator craft. A Special Local Regulation exists at 33 CFR 100.718 for this event, which is usually held in July. However, the sponsor changed the date for this year. These regulations are intended to promote safe navigation on the waters of Sarasota Bay by controlling the traffic entering, exiting, and traveling within the regulated area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only approximately five hours on the day of the event and traffic can safely pass around the race area.

Small Entities

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

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. This regulation will only be in effect for five hours on the day of the event. Further traffic can safely pass around the regulated area.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–221), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Temporarily suspend § 100.718 and add temporary § 100.35T–07–043 to read as follows:

§ 100.35T–07–043 Annual Suncoast Kilo Run; Sarasota Bay, Sarasota, FL

(a) *Regulated Area:* The regulated area is established in Sarasota Bay with the northwest corner point at Whale Key, position 27°23'53" N, 082°37'46" W, extending to the northeast corner point at Bayshore Gardens Channel, position 27°25'11" N, 082°35'45" W, extending to the southeast corner point at Whitaker Bayou, position 27°21'22" N, 082°33'14" W, and then to the southwest corner

point at Quick Point, position 27°20'18" N, 082°34'36" W. All coordinates referenced use datum: NAD 83.

(b) *Special local regulations.* (1) In accordance with these regulations, the regulated area is designated as a "no wake" zone. Spectator craft are permitted into the area, but are prohibited from entering the race course areas described in (b)(2) of this section.

(2) Inside the "no wake" zone are two designated areas surrounding the primary and alternate race courses. Primary course "A" is bounded by a line connecting the northeast corner point at position 27°22'10" N, 082°36'09" W, a southeast corner point at position 27°21'31" N, 082°35'37" W, a southwest corner point at position 27°21'27" N, 082°35'48" W, and a northwest corner point at position 27°22'05" N, 082°36'16" W. Alternate course "B" is bounded by a line connecting the northeast corner point at position 27°23'11" N, 082°34'31" W, a southeast corner point at position 27°22'35" N, 082°34'03" W, a southwest corner point at position 27°22'31" N, 082°34'08" W, and a northwest corner point at position 27°23'09" N, 082°34'38" W. All coordinates referenced use datum: NAD 83.

(3) Entry into the regulated area shall be in accordance with this regulation.

(c) *Effective Dates.* This rule is effective 8 a.m. June 29, 2001 until 1 p.m. June 29, 2001.

Dated: May 24, 2001.

G.W. Sutton,

*Captain U.S. Coast Guard, Commander,
Seventh Coast Guard District Acting.*

[FR Doc. 01-14229 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07-01-040]

RIN 2115-AE46

Special Local Regulations; Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC. The event will be held in the Calibogue Sound, Hilton Head, SC. The regulations are needed to provide for the

safety of life on navigable waters during the event.

DATES: This rule is effective from 8:30 p.m. to 10:15 p.m. on July 4 and July 5, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD07-01-040] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St., Charleston, SC 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Bill Walsh, Coast Guard Group Charleston at (843) 724-7600 x203.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be unnecessary and contrary to national safety interests since immediate action is needed to minimize potential danger to the public because there will be numerous spectator craft in the area.

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger of fireworks being launched near spectator vessels during the Harbour Town Display, Calibogue Sound, Hilton Head, SC. The regulations prohibit vessels from coming within 1000 feet of the fireworks barge which will be located at approximate position 32 08.2°N, 080 49.2°W.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Calibogue Sound from 8:30 p.m. to 10:15 p.m. on July 4, 2001. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the rule will be in effect for only 1 hour and 45 minutes.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal

Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2-1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

Indian Tribal Governments

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46; 33 CFR 100.35.

2. Temporary § 100.35T-07-040 is added to read as follows:

§ 100.35T-07-040, Temporary Special Local Regulation, Calibogue Sound, Harbor Town, Hilton Head, SC.

(a) *Regulated Area:* A regulated area is established on the waters of Calibogue Sound, Harbour Town, Hilton Head, SC, within a 1000 foot radius of a fireworks launch area on a barge in approximate position 32 08.2'N, 080 49.2'W. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Group Charleston, SC.

(c) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor The Club Group, LTD.

(d) *Dates:* These regulations are effective from 8:30 p.m. to 10:15 p.m. local time on July 4, 2001. If event is postponed they are effective from 8:30 p.m. to 10:15 p.m. on July 5, 2001.

Dated: May 24, 2001.

G.W. Sutton,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 01-14228 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-01-078]

RIN 2115-AA97

Safety Zone: Fireworks Display, Kill Van Kull, Staten Island, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located on the Kill Van Kull. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Kill Van Kull.

DATES: This rule is effective from 9 p.m. until 11:59 p.m. on June 24, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01-01-078) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204,

Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354-4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. Further, it is a local event with minimal impact on the waterway, vessels may still transit through the northern 195 yards of the 390-yard wide Kill Van Kull during the event, the zone is only in effect for 3 hours and vessels can be given permission to transit the zone except for about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: It is a local event with minimal impact on the waterway, vessels may still transit through the northern 195 yards of the 390-yard wide Kill Van Kull during the event, the zone is only in effect for 3 hours and vessels can be given permission to transit the zone except for about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Background and Purpose

The Coast Guard has received an application to hold a fireworks program on the waters of the Kill Van Kull. This regulation establishes a safety zone in all waters of the Kill Van Kull within a 180-yard radius of the fireworks barge in approximate position 40°38'58.4"N, 074°04'41.0"W (NAD 1983), about 280

yards northwest of the Staten Island Ferry Terminal. The safety zone is in effect from 9 p.m. until 11:59 p.m. on Sunday, June 24, 2001. The safety zone prevents vessels from transiting a portion of the Kill Van Kull and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the northern 195 yards of the 390-yard wide Kill Van Kull during this event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners, Marine Information and Facsimile Broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the northern 195 yards of the 390-yard wide Kill Van Kull during the event, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone, and advance notifications, which will be made.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 6" mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact Lieutenant M. Day (see **FOR FURTHER INFORMATION CONTACT**).

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Kill Van Kull during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. It is a local event with minimal impact on the waterway, vessels may still transit through the northern 195 yards of the 395-yard wide Kill Van Kull during the event, the zone is only in effect for 3 hours and vessels can be given permission to transit the zone except for about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Before the effective period, public notifications will be made via Local Notice to Mariners, Marine Information and Facsimile Broadcasts, which are widely available to users of the Kill Van Kull.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion

Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–078 to read as follows:

§ 165.T01–078 Safety Zone: Fireworks Display, Kill Van Kull, Staten Island, NY.

(a) *Location.* The following area is a safety zone: All waters of the Kill Van Kull within a 180-yard radius of the fireworks barge in approximate position 40°38'58.4"N, 074°04'41.0"W (NAD 1983), about 280 yards northwest of the Staten Island Ferry Terminal.

(b) *Effective period.* This section is effective from 9 p.m. until 11:59 p.m. on June 24, 2001.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 20, 2001.

P.A. Harris,

Captain, U.S. Coast Guard, Captain of the Port, New York, Acting.

[FR Doc. 01–14232 Filed 6–5–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–042]

RIN 2115–AA97

Safety Zone: Grosse Pointe Farms, Lake St. Clair, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Celebrate America Fundraiser fireworks display on June 14th, 2001. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch platform and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Lake St. Clair.

DATES: This temporary final rule is effective from 9 p.m. until 11 p.m. on June 14th and 15th, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–042] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott St., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Brandon Sullivan, U. S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott St., Detroit, MI 48207. The telephone number is (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), we find that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the date of the event. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters within 300-yards of a fireworks barge located approximately 500 feet offshore of 950 Lake Shore Rd., Grosse Pointe Farms in Lake St. Clair. The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and therefore

minor, if any, adverse impacts to mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities. The owners or operators of commercial vessels intending to transit, or anchor in, a portion of the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is only in effect from 9 p.m. until 11 p.m. on the day of the event. During the event vessel traffic can safely pass outside the proposed safety zone. In addition, traffic may be authorized to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Detroit or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of Lake St. Clair by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact Marine Safety Office Detroit (see **ADDRESSES**).

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

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–917 is added to read as follows:

§ 165.T09–917 Safety Zone: Grosse Pointe Farms, Lake St. Clair, MI.

(a) *Location.* The safety zone will encompass all waters within a 300-yard radius of the fireworks barge located approximately 500 yards offshore from 950 Lake Shore Rd., Grosse Pointe Farms, MI in Lake St. Clair.

(b) *Effective Time and Date.* This section is effective from 9 p.m. (local time) until 11 p.m. (local time) on June 14th, 2001. In the event the fireworks display is cancelled due to inclement weather, this section is effective during these same times on June 15th, 2001. The Coast Guard Captain of the Port Detroit and the designated Patrol Commander have the authority to terminate this event at any time. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of

this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative.

Dated: May 29, 2001.

S.P. Garrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 01-14231 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-301130; FRL-6783-3]

RIN 2070-AB78

Bacillus thuringiensis Cry1F Protein and the Genetic Material Necessary for its Production in Corn; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited exemption from the requirement of a tolerance for residues of the plant-pesticides *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn when applied/used as a plant-pesticide. Mycogen Seeds c/o Dow AgroSciences LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance.

DATES: This regulation is effective June 6, 2001. Objections and requests for hearings, identified by docket control number OPP-301130, must be received by EPA, on or before August 6, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301130 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703)

308-8715; and e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *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/>. To access this document, 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/>. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml/180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301130. The official record consists of the documents specifically referenced in this action, 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of March 2, 2000 (65 FR 11311) (FRL-6494-3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act (FQPA) (Public Law 104-170) announcing the filing of a pesticide tolerance petition, petition number 0F6078, by Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268-1054. This notice included a summary of the petition prepared by the petitioner Mycogen Seeds c/o Dow AgroSciences LLC. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the plant pesticide *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production in plants in or on all food commodities. While this final rule is limited to Cry1F in or on corn, the Agency may at future dates issue final rules for Cry1F protein plant-pesticides on plant agricultural commodities in addition to corn.

III. Risk Assessment

Pursuant to section 408(c)(2)(A)(i) of the FFDCA, EPA may establish of leave in effect an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance exemption is "safe." With respect to an exemption for a pesticide chemical residue, section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable

information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....” Additionally, section 408(b)(2)(D) requires that the Agency consider “available information” concerning, *inter alia*, the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.”

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Pursuant to section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure Cry1F protein. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-pesticide was derived. See 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

The acute oral toxicity data submitted support the prediction that the Cry1F protein would be non-toxic to humans. Male and female mice (5 of each) were dosed with 15% (w/v) of the test substance, which consisted of *Bacillus*

thuringiensis var. *aizawai* Cry1F protein at a net concentration of 11.4%. Two doses were administered approximately an hour apart to achieve the dose totaling 33.7 mL/kg body weight. Outward clinical signs and body weights were observed and recorded throughout the 14 day study. Gross necropsies performed at the end of the study indicated no findings of toxicity. No mortality or clinical signs were noted during the study. An LD₅₀ was estimated at >5,050 mg/kg body weight of this microbially produced test material. The actual dose administered contained 576 mg Cry1F protein/kg body weight. At this dose, no LD₅₀ was demonstrated as no toxicity was observed. Cry1F maize seeds contain 0.0017 to 0.0034 mg of Cry1F/gram of corn kernel tissue.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjogblad, Roy D., et al. “Toxicological Considerations for Protein Components of Biological Pesticide Products,” *Regulatory Toxicology and Pharmacology* 15L, 3–9 (1992). Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose levels, the Cry1F protein is not considered toxic. Further, amino acid sequence comparisons showed no similarity between Cry1F protein to known toxic proteins available in public protein databases.

Since Cry1F is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, may be glycosylated and present at high concentrations in the food.

Data has been submitted which demonstrates that the Cry1F protein is rapidly degraded by gastric fluid *in vitro* and is non-glycosylated. In a solution of Cry1F:pepsin at a molar ratio of 1:100, complete degradation of Cry1F to amino acids and small peptides occurred in 5 minutes. A heat lability study demonstrated the loss of bioactivity of Cry1F protein to neonate tobacco budworm larvae after 30 minutes at 75 °C. Studies submitted to EPA done in laboratory animals have not indicated any potential for allergic reactions to *Bacillus thuringiensis* or its components, including the δ —endotoxin of the crystal protein. Additionally, a comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry1F, even at the level of 8 contiguous amino acids residues.

The potential for the Cry1F protein to be a food allergen is minimal.

Regarding toxicity to the immune system, the acute oral toxicity data submitted support the prediction that the Cry1F protein would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjogblad, Roy D., et al. “Toxicological Considerations for Protein Components of Biological Pesticide Products,” *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992). Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose levels, the Cry1F protein is not considered toxic.

V. Aggregate Exposures

Pursuant to FFDCA section 408(b)(2)(D)(vi), EPA considers available information concerning aggregate exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-pesticide chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-pesticide is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water. However a lack of mammalian toxicity and the digestibility of the plant-pesticides have been demonstrated. The use sites for the Cry1F protein are all agricultural for control of insects. Therefore, exposure via residential or lawn use to infants and children is not expected. Even if negligible exposure should occur, the Agency concludes that such exposure would present no risk due to the lack of toxicity demonstrated for the Cry1F protein.

VI. Cumulative Effects

Pursuant to FFDCA Section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These

considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to these plant-pesticides, we conclude that there are no cumulative effects for the Cry1F protein.

VII. Determination of Safety for U.S. Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the Cry1F protein include the characterization of the expressed Cry1F protein in corn, as well as the acute oral toxicity, heat stability, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the Cry1F test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-pesticide ingredients in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted supports the prediction that the Cry1F protein would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology* 15," 3-9 (1992)). Since no effects were shown to be caused by Cry1F protein, even at relatively high dose levels >5,050 mg test substance/kg body weight; 576 mg Cry1F/kg body weight), the Cry1F protein is not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-pesticide was derived. See 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

Although Cry1F expression level data were required for an environmental fate and effects assessment, residue chemistry data were not required for a human health effects assessment of the

subject plant-pesticide ingredients because of the lack of mammalian toxicity.

Both (1) available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children); and (2) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data were not evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry1F protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-pesticides active ingredients are the nucleic acids (DNA, RNA) which comprise (1) genetic material encoding these proteins and (2) their regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the proteins. DNA and RNA are common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids, as they appear in the subject active ingredient, have been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject active plant pesticidal ingredients.

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(B)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency

concludes that there is a finding of no toxicity for the Cry1F protein and the genetic material necessary for its production. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry1F protein and the genetic material necessary for its production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant-pesticides.

VIII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredients are proteins, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of these plant-pesticides at this time.

B. Analytical Method

A validated method for extraction and direct enzyme linked immunosorbent assay analysis of Cry1F in corn grain has been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exists for the plant-pesticides *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production in corn.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations that govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an

exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-301130 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 6, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at

tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP-301130, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any tribal implications as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Policies that have tribal implications is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection,
Administrative practice and procedure,
Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: May 18, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 —[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1217 is added to subpart D to read as follows:

§ 180.1217 *Bacillus thuringiensis* Cry1F Protein and the Genetic Material Necessary for its Production in Corn; exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry1F protein and the genetic material necessary for its production in corn are exempt from the requirement of a tolerance when used as plant-pesticides in the food and feed commodities of field corn, sweet corn and popcorn. "Genetic material necessary for its production" means the genetic material which comprise: genetic material encoding the Cry1F protein and its regulatory regions. "Regulatory regions" are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry1F protein.

[FR Doc. 01-13837 Filed 6-5-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-301134; FRL-6785-5]

RIN 2070-AB78

Clethodim; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues/combined residues of clethodim in or on alfalfa forage, alfalfa hay, dry beans, peanut hay, peanut meal, peanuts, tomato paste, and tomato puree. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire on April 30, 2003.

DATES: This regulation is effective June 6, 2001. Objections and requests for hearings, identified by docket control number OPP-301134 must be received by EPA on or before August 6, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301134 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-6224; and e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *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>

www.epa.gov/. To access this document, 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/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml/180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301134. The official record consists of the documents specifically referenced in this action, 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of March 28, 2001 (66 FR 16931) (FRL-6773-5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170) announcing the filing of pesticide petitions (PP 5F4440 and 5F4572) for

tolerance by Valent U.S.A. Corporation, 1333 N. California Blvd., Ste. 600, Walnut Creek, CA 94596-8025. This notice included a summary of the petitions prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.458 be amended by extending time-limited tolerances for combined residues of the herbicide clethodim, ((E)-(+)-2-[1-[[[3-chloro-2-propenyl]oxy]imino]propyl]-5-[2-ethylthio]propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-(ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulfoxides and sulphones, expressed as clethodim, in or on alfalfa forage at 6 parts per million (ppm), alfalfa hay at 10 ppm, dry beans at 2 ppm, peanut hay at 3 ppm, peanut meal at 5 ppm, peanuts at 3 ppm, tomato paste at 3 ppm, and tomato puree at 2 ppm. Time-limited tolerances on these commodities are extended to allow EPA sufficient time to evaluate new residue data for these commodities. Valent U.S.A. Corporation is not proposing to extend the time-limited tolerance for residues on tomatoes at 1.0 ppm because tolerances are issued for residues on fruiting vegetables (except cucurbits), which includes tomatoes, at 1.5 ppm. The tolerances will expire on April 30, 2003.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special

consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of clethodim on alfalfa forage at 6 ppm, alfalfa hay at 10 ppm, dry beans at 2 ppm, peanut hay at 3 ppm, peanut meal at 5 ppm, peanuts at 3 ppm, tomato paste at 3 ppm, and tomato puree at 2 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clethodim are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline Number	Study Type	Results
870.3100	Subchronic-Feeding-Rat	NOAEL= 25 mg/kg/day LOAEL= 134 mg/kg/day based on decreased body weights, body weight gains, food consumption, and increased absolute and relative liver weights, and centrilobular hypertrophy of liver in both sexes.
870.3150	Subchronic-Feeding-Dog	NOAEL= 25 mg/kg/day

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline Number	Study Type	Results
		LOAEL= 75 mg/kg/day based on increased absolute and relative liver weights, severity of liver lesions in both sexes, and increased serum cholesterol and alkaline phosphatase in females.
870.3200	21-Day Dermal Toxicity-Rat	Systemic NOAEL= 100 mg/kg/day LOAEL= 1000 mg/kg/day based on anogenital discharge and staining in both sexes, decreased food efficiency and body weight gain in males, and increases in absolute and relative liver weights in females. Dermal NOAEL= not established. LOAEL= 10 mg/kg/day based on observed dermal irritation.
870.3700	Developmental Toxicity-Rat	Maternal NOAEL= 100 mg/kg/day LOAEL= 350 mg/kg/day based on decreased body weight gain and clinical signs. Developmental NOAEL= 100 mg/kg/day LOAEL= 350 mg/kg/day based on decreased fetal body weight and increased skeletal anomalies.
870.3700	Developmental Toxicity-Rabbit	Maternal NOAEL= 25 mg/kg/day LOAEL= 100 mg/kg/day based on decreased weight gain and food consumption and clinical signs. Developmental NOAEL $\geq \leq$ 300 mg/kg/day LOAEL= Not determined because no developmental toxicity observed.
870.3800	Reproductive Toxicity- 2 Generation Rat	Parental/Systemic NOAEL= 51 mg/kg/day LOAEL= 263 mg/kg/day based on decreased body weight in both sexes, and particularly in both generations of males, decreased food consumption. Reproductive NOAEL= 263 mg/kg/day (highest dose tested) LOAEL= Not determined because no effects were noted for fertility, length of gestation or growth and development of offspring. Offspring NOAEL= 263 mg/kg/day (highest dose tested) LOAEL= Not determined (see above).
870.4100	Chronic-Feeding-Dog	NOAEL= 1 mg/kg/day LOAEL= 75 mg/kg/day based on increased absolute and relative liver weights in both sexes with histopathological changes (males only) and increased liver enzymes.
870.4200	Carcinogenicity-Mouse (78-week)	NOAEL= 30 mg/kg/day LOAEL= 150 mg/kg/day based on decreased survival, decreased hematology parameters, increased absolute and relative liver weights (female only), centrilobular hypertrophy, increased pigment and bile duct hyperplasia in both sexes. No evidence of carcinogenicity.
870.4300	Chronic Toxicity/Carcinogenicity-Rat	NOAEL= 19 mg/kg/day LOAEL= 100 mg/kg/day based on decreased body weight means, body weight gains, food consumption, and food efficiency (males only), and increased absolute and relative liver weights with centrilobular hypertrophy (at 12 months) in both sexes. No evidence of carcinogenicity.
870.5100	Gene Mutation - Salmonella	Negative for reverse mutation in Salmonella (and <i>E. coli</i>) exposed to cytotoxic levels (10,000 μ g/plate) with/without activation.
870.5300	CHO Assay	Positive for inducing structural aberrations only in the absence of activation (negative +S9) at dose near limit of solubility and cytotoxicity (1.0 to 1.2 μ L/ml).
870.5395	Micronucleus Assay	Negative for chromosomal damage in bone marrow cells of rats treated orally up to toxic doses (1,500 mg/kg).
870.5550	Unscheduled DNA Synthesis	Negative for unscheduled DNA synthesis (UDS) in hepatocytes from mice treated orally up to toxic doses (5,000 mg/kg).
870.7485	Metabolism Rat	Clethodim is readily absorbed and eliminated (87–92%, urine; 9–17%, feces; $\leq$ 1% expired air) after 7 days. Gastrointestinal absorption estimated at 89–96%. No evidence of bioconcentration. Extensively metabolized with < 1% eliminated as unchanged parent compound. Predominant metabolite is clethodim sulphoxide (48–68%) after 48 hours.
870.7600	Dermal Absorption Rat	At 10 hours after receiving a single dermal application of 0.05 mg/rat the dermal absorption factor was 30%.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where

the RfD is equal to the NOAEL divided by the appropriate UF ($RfD = NOAEL / UF$). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = $NOAEL / \text{exposure}$) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach

assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{\text{cancer}} = \text{point of departure} / \text{exposures}$) is calculated. A summary of the toxicological endpoints for clethodim used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CLETHODIM FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern (LOC) for Risk Assessment	Study and Toxicological Effects
Acute Dietary All Populations	N/A	N/A	There were no effects observed in oral toxicity studies including developmental toxicity studies in rats and rabbits that could be attributable to a single dose (exposure). Therefore, a dose and endpoint were not selected for this risk assessment.
Chronic Dietary All populations	NOAEL= 1.0 mg/kg/day; UF = 100; Chronic RfD = 0.01 mg/kg/day	FQPA SF = 1; cPAD = chronic RfD/FQPA SF = 0.01 mg/kg/day	Chronic Toxicity-Dog (1 year). Alterations in hematology and clinical chemistry parameters and increased absolute and relative liver weights observed at the LOAEL of 75 mg/kg/day.
Short-Term Dermal (1 to 7 days) (Residential)	Oral study Maternal NOAEL= 100 mg/kg/day (dermal absorption rate = 30%)	LOC for MOE = 100 (Residential)	Developmental Toxicity-Rat. LOAEL = 350 mg/kg/day based on decreased body weight gain and clinical signs of toxicity (salivation).
Intermediate-Term Dermal (1 week to several months) (Residential)	Oral study NOAEL= 25 mg/kg/day (dermal absorption rate = 30%)	LOC for MOE = 100 (Residential)	Subchronic Toxicity-Dog (90 days). LOAEL = 75 mg/kg/day based on increased absolute and relative liver weights.
Long-Term Dermal (several months to lifetime) (Residential)	Oral study NOAEL= 1.0 mg/kg/day (dermal absorption rate = 30%)	LOC for MOE = 100 (Residential)	Chronic Toxicity-Dog (1 year). LOAEL = 75 mg/kg/day based on alterations in hematology and clinical chemistry parameters as well as increases in absolute and relative liver weights.
Short-Term Inhalation (1 to 7 days) (Residential)	Oral study Maternal NOAEL= 100 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental-Rat LOAEL = 350 mg/kg/day based on decreased body weight gain and clinical signs of toxicity (salivation).

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CLETHODIM FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern (LOC) for Risk Assessment	Study and Toxicological Effects
Intermediate-Term Inhalation (1 week to several months) (Residential)	Oral study NOAEL = 25 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Subchronic Toxicity-Dog (90 days). LOAEL = 75 mg/kg/day based on increased absolute and relative liver weights.
Long-Term Inhalation (several months to lifetime) (Residential)	Oral study NOAEL = 1.0 mg/kg/day (dermal absorption rate = 30%)	LOC for MOE = 100 (Residential)	Chronic Toxicity-Dog (1 year). LOAEL = 75 mg/kg/day based on alterations in hematology and clinical chemistry parameters as well as increases in absolute and relative liver weights.
Cancer (oral, dermal, inhalation)	N/A	N/A	Clethodim is classified as a "Not Likely" carcinogen

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.458) for the combined residues of clethodim, in or on a variety of raw agricultural commodities. Tolerances are established on fat, meat, and meat by products (mbyp) of cattle, goats, hogs, horses, poultry, and sheep at 0.20 ppm, milk at 0.05 ppm, eggs at 0.20 ppm, carrots at 0.50 ppm, cranberry at 0.50 ppm, clover forage at 10.0 ppm, clover hay at 20.0 ppm, cottonseed at 1.0 ppm, cottonseed meal at 2.0 ppm, fruiting vegetable group at 1.0 ppm, leaf petioles subgroup at 0.60 ppm, melon subgroup at 2.0 ppm, potatoes at 0.5 ppm, potato flakes and granules at 2.0 ppm, radish roots at 0.50 ppm, radish tops at 0.70 ppm, squash/cucumber subgroup at 0.50 ppm, strawberry at 3.0 ppm, sunflower meal at 10.0 ppm, sunflower seed at 5.0 ppm, soybeans at 10.0 ppm, soybean soapstock at 15.0 ppm, dry bulb onions at 0.20 ppm, sugar beet roots at 0.20 ppm, sugar beet tops at 1.0 ppm, sugar beet molasses at 1.0 ppm, and tuberous and corm vegetables at 1.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures from clethodim in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity studies including developmental toxicity studies in rats or rabbits that could be attributable to a single dose (exposure). Therefore, an acute dietary

exposure assessment was not performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The 3-day average of consumption for each sub-population is combined with residues to determine average exposure as mg/kg/day. The chronic analysis was performed using tolerance level residues for all crops and animal commodities. The weighted average percent of crop treated data for existing registrations, and 100% crop treated (CT) data (for new uses) were used for the analyses.

iii. *Cancer.* Clethodim has been classified as a group E carcinogen. Therefore, a cancer risk assessment is not required.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the

population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows:

3% for cotton, 8% for onions, 3% for peanuts, 4% for soybeans, 15% for sugar beets, and 1% for tomatoes

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an

underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which clethodim may be applied in a particular area.

2. *Dietary exposure from drinking water.* Known environmental characteristics of clethodim depict a compound which is stable to hydrolysis, except in acid conditions, but highly susceptible to photolysis and metabolism.

Parent clethodim is mobile, but has a short metabolic half-life of 1–3 days in soil under aerobic conditions. Therefore, parent compound should not be a ground water concern in most environments. In the event that parent clethodim did reach ground water, the available routes of disappearance would be dilution, some metabolism to persistent degradates, and slow hydrolysis with the rate depending on the pH of the ground water.

The environmental fate data indicate that clethodim, and its sulphoxide and sulphone metabolites may migrate into surface water bodies through run-off which occurs shortly after application (e.g. rainfall). Since they are not adsorbed readily to soil (K_{as} of < 0.1 to 7), they are likely to remain in the aqueous phase, where they are subject to rapid photolysis and biodegradation. They may remain long enough to exert acute effects on resident biota, but are unlikely to cause chronic effects.

Clethodim does not show a significant potential for bio-accumulation in aquatic organisms. Although they have been individually tested, the primary degradates are highly polar, and would not be expected to bio-accumulate.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for clethodim in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates

are made by reliance on simulation or modeling taking into account data on the physical characteristics of clethodim.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to clethodim they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of clethodim for chronic exposures are estimated to be 24.2 ppb for surface water and 0.49 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in

this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clethodim is not registered for use on any sites that would result in residential exposure. Based on clethodim labels, Select® and Select® 2EC are both available for weed control use in residential and/or public areas. However, the registrant has indicated that the product is not for use by homeowners. Therefore, homeowners will not handle clethodim products, and a non-occupational handler exposure assessment is not necessary. Following treatment by professional applicators, the public could potentially come into contact with clethodim residues in areas such as patios, along driveways and around golf courses and fence lines. However, weed control with clethodim in these areas generally consists of a spot treatment, resulting in a very small treated area, and it is unlikely that children would be exposed to these treated areas. Therefore, a non-occupational postapplication exposure assessment was not performed.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether clethodim has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clethodim does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that clethodim has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for

infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* exposure to clethodim.

3. *Conclusion.* There is a complete toxicity database for clethodim and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed primarily because there is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration

in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, the Office of Pesticides Programs (OPP) concludes with reasonable certainty that exposures to

the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* An endpoint for acute dietary exposure was not identified since no effects were observed in oral toxicity studies that could be attributable to a single dose.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to clethodim from food will utilize 29% of the cPAD for the U.S. population, 43% of the cPAD for infants less than one year old and 60% of the cPAD for children 1–6 years old. There are no residential uses for clethodim that result in chronic residential exposure to clethodim. In addition, there is potential for chronic dietary exposure to clethodim in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CLETHODIM

Population Subgroup	cPAD (mg/kg)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (total)	0.01	29	24.2	0.49	250
All Infants (< 1 year)	0.01	43	24.2	0.49	57
Children 1–6 years	0.01	60	24.2	0.49	40
Children 7–12 years	0.01	42	24.2	0.49	58
Females 13–50 years	0.01	22	24.2	0.49	230

3. *Short-term risk.* Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Clethodim is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Clethodim has been classified as a group E carcinogen. Therefore, clethodim is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to clethodim residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The method RM-26B-3 (a modification of RM-26B-2) was validated for potatoes, processed potato commodities, sugar beets, sunflowers, bell peppers, non-bell peppers, celery, cantaloupes, and clover. The limit of quantitation (LOQ) was determined to be 0.1 ppm for cantaloupes and bell peppers, 0.2 ppm for potatoes, sugar beets, sunflowers, celery and non-bell

peppers, and 0.5 ppm for clover. Average recoveries for all the commodities were within the acceptable range at all fortification levels tested. The common moiety method RM-26B-3 for the determination of clethodim and its metabolites in potatoes, processed potato commodities, sugar beets, sunflowers, bell peppers, non-bell peppers, celery, cantaloupes, and clover is acceptable for data collection and enforcement purposes.

Method RM-26B-2 was validated for the analyses of residues of clethodim in/on radish, carrots, cucumbers, cranberries, and strawberries. The limit of quantitation (LOQ) was determined to be 0.05 ppm for strawberries and cranberries, 0.1 ppm for carrots, and 0.16 ppm for radish. Average recoveries were within the acceptable range for all fortification levels tested and all commodities. The method RM-26B-2 for the determination of clethodim and its metabolites in radish, carrots, cucumbers, cranberries, and strawberries is acceptable for data collection and enforcement purposes.

The common moiety method RM-26B-3 for the determination of clethodim and its metabolites is similar to the common moiety method RM-26B-2. The method RM-26B-2 has previously undergone a successful Independent Laboratory Validation (ILV) and an Agency Petition Method Validation. Additionally, a confirmatory method, EPA-RM-26D-2 is also available. Both methods (RM-26B-2 and RM-26D-2) have been forwarded to FDA as enforcement methods for inclusion in the Pesticide Analytical Manual, Volume II (PAM II).

The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no established Codex maximum residue limits (MRLs) for residues of clethodim and its metabolites in/on the commodities discussed in the subject petition; therefore, there are no questions with respect to Codex/U.S. tolerance compatibility.

V. Conclusion

Therefore, the tolerance is established for combined residues of clethodim, ((E)-(+)-2-[1-[(3-chloro-2-propenyl)oxylimino]propyl]-5-[2-ethylthio]propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites

containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-(ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, expressed as clethodim, in or on alfalfa forage at 6 ppm, alfalfa hay at 10 ppm, dry beans at 2 ppm, peanut hay at 3 ppm, peanut meal at 5 ppm, peanuts at 3 ppm, tomato paste at 3 ppm, and tomato puree at 2 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-301134 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 6, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the

information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP-301134, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit

I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as

specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule."

VIII. 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 21, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.458 is amended by revising the section heading and by revising paragraph (a)(2) to read as follows:

§180.458 Clethodim, tolerances for residues.

(a) *General.* * * *

(2) Time limited tolerances are established for the combined residues of clethodim, ((E)-(+)-2-[1-[[[3-chloro-2-propenyl]oxymino]propyl]-5-[2-ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-(ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, expressed as clethodim in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Alfalfa, forage	6	4/30/03
Alfalfa, hay	10	4/30/03
Dry beans	2	4/30/03
Peanuts	3	4/30/03
Peanut, hay	3	4/30/03
Peanut, meal	5	4/30/03
Tomato, paste	3	4/30/03
Tomato, puree	2	4/30/03

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

Tolerances and Exemptions from Tolerances for Pesticide Chemicals in Food

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 150 to 189, revised as of July 1, 2000, part 180 is corrected by adding § 180.200 to read as follows:

§ 180.200 Dicloran; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide 2,6-dichloro-4-nitroaniline in or on the following raw agricultural commodities. Unless otherwise specified, these tolerances prescribed in this paragraph provide for residues from preharvest application only.

Commodity	Parts per million
Apricot (PRE- and POST-H)	20
Bean, snap	20
Carrot (POST-H)	10
Celery	15
Cherry, sweet (PRE- and POST-H)	20
Cucumber	5
Endive (escarole)	10
Garlic	5
Grape	10
Lettuce	10
Nectarine (PRE- and POST-H)	20
Onion	10
Peach (PRE- and POST-H)	20
Plum (fresh prune) (PRE- and POST-H)	15
Potato	0.25
Rhubarb	10
Sweet potato (POST-H)	10
Tomato	5

(2) Unless otherwise specified, these tolerances prescribed in this section provide for residues from preharvest application only.

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of the fungicide, dicloran, 2,6-dichloro-4-nitroaniline in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Peanut, oil	6.0	10/31/01
Peanuts	3.0	10/31/01

(c) *Tolerances with regional registrations.* Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[46 FR 27938, May 22, 1981, as amended at 63 FR 162, Jan. 5, 1998; 63 FR 57073, Oct. 26, 1998; 64 FR 13096, Mar. 17, 1999]

[FR Doc. 01-55507 Filed 6-5-01; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

Universal Service

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 40 to 69, revised as of October 1, 2000, part 54 is corrected by adding § 54.707 as set forth below:

§ 54.707 Audit controls.

The Administrator shall have authority to audit contributors and carriers reporting data to the administrator. The Administrator shall establish procedures to verify discounts, offsets, and support amounts provided by the universal service support programs, and may suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets, or support amounts provided upon reasonable request, or if directed by the Commission to do so. The Administrator shall not provide reimbursements, offsets or support amounts pursuant to part 36 and § 69.116 through 69.117 of this chapter, and subparts D, E, and G of this part to a carrier until the carrier has provided to the Administrator a true and correct copy of the decision of a state commission designating that carrier as an eligible telecommunications carrier in accordance with § 54.201.

[FR Doc. 01-55517 Filed 6-5-01; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 00-257 and 94-129; FCC 01-156]

2000 Biennial Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects an error in the docket heading portion of a **Federal Register** document regarding streamlined waiver procedures that the Commission adopted for the carrier-to-carrier sale or transfer of subscriber basis. The Commission's new procedures provide for an acquiring carrier to simply self-certify to the Commission, in advance of the transfer, that the carrier will follow the required procedures. The summary was published in the **Federal Register** on May 22, 2001.

DATES: Effective June 6, 2001.

FOR FURTHER INFORMATION CONTACT: Michele Walters, Associate Division Chief, or Dana Walton-Bradford, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This summary contains a correction to the heading portion of a **Federal Register** summary, 66 FR 28117 (May 22, 2001). The full text of the Commission's Report and Order is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

Correction

1. On page 28117, in the second column, in the docket heading, "FCC 01-153" is corrected to read "FCC 01-156."

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 01-14168 Filed 6-5-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 01-1239; MM Docket No. 01-37, RM-10065]

Radio Broadcasting Services; Houston and Anchorage, AK**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: The Commission, at the request of Chester P. Coleman substitutes Channel 234C1 for Channel 234C2 at Houston, Alaska, and modifies Station KADX's license to reflect the change. It also modifies the license of Ubik Corporation, licensee of Station KNIK-FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of the present Channel 287C1, after Ubik failed to respond to the Order to Show Cause issued to it to show cause why its license should not be so modified. Channel 234C1 is allotted at Houston, Alaska, consistent with the minimum distance separation requirements of section 73.207(b) and the principal community coverage requirements of section 73.315(a) of the Commission's Rules at coordinates 61-29-03 NL and 149-45-52 WL, with a site restriction of 17.2 kilometers (10.7 miles) south of the community. Channel 286C1 is allotted at Anchorage, Alaska consistent with the minimum distance separation requirements of section 73.207(b) and the principal community coverage requirements of section 73.315(a) of the Commission's Rules, at Station KNIK-FM's licensed site, at coordinates 61-11-33 NL and 149-54-01 WL, 2.8 kilometers (1.8 miles) south of the community.

DATES: Effective July 2, 2001.**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-37, adopted May 9, 2001, and released on May 18, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036 (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by removing Channel 234C2 and adding Channel 234C1 at Houston, and by removing Channel 287C1 and adding Channel 286C1 at Anchorage.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01-14017 Filed 6-5-01; 8:45 am]

BILLING CODE 6712-01-P**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 90**

[PR Docket No. 93-144; FCC 01-150]

Amendment of Part of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band**AGENCY:** Federal Communications Commission, Wireless Telecommunications Bureau.**ACTION:** Final rule; denial of petition for reconsideration.

SUMMARY: The Commission terminates the Fresno Remand Order proceeding and denies Chadmoore Wireless Group, Inc.'s ("Chadmoore") Petition for Reconsideration filed on January 24, 2000. Chadmoore raised no new issues

that would persuade the Commission to reverse their previous decision in the Fresno Remand Order.

FOR FURTHER INFORMATION CONTACT: William Kunze, Wireless Telecommunications Bureau, at (202) 418-7887.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Order On Reconsideration, FCC 01-150, in PR Docket No. 93-144, adopted on May 1, 2001 and released on May 9, 2001. The full text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's.

1. In this document the Commission reviews the Petition for Reconsideration, filed on January 24, 2000 by Chadmoore Wireless Group, Inc. (Chadmoore), seeking reconsideration of the Commission's Fresno Remand Order.

2. Chadmoore presented no new arguments in its Petition for Reconsideration, and the Commission sees nothing in the argument Chadmoore has made that would lead the Commission to change its decision in the Fresno Remand Order.

3. Pursuant to section 1.106 of the Commission's rules, 47 CFR 1.106, the Petition for Reconsideration filed by Chadmoore Wireless Group, Inc. on January 24, 2000 in the above-captioned proceeding *Is Denied*.

4. Pursuant to sections 1, 4(i), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 332, this proceeding *Is Terminated*.

Federal Communications Commission.

William F. Caton,

Deputy, Secretary.

[FR Doc. 01-14140 Filed 6-5-01; 8:45 am]

BILLING CODE 6712-01-P**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Part 393**

[FMCSA Docket FMCSA-1997-2222]

Parts and Accessories Necessary for Safe Operation; Trailer Conspicuity**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Final rule; partial suspension of deadline.

SUMMARY: The FMCSA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to extend the deadline for motor carriers operating intermodal container chassis (container chassis) to comply with the agency's requirement that trailers manufactured before December 1, 1993, be retrofitted with retroreflective sheeting (or reflex reflectors). Currently, the FMCSRs require that motor carriers engaged in interstate commerce install retroreflective tape or reflex reflectors on the sides and rear of semitrailers and trailers that were manufactured prior to December 1, 1993, have an overall width of 2,032 mm (80 inches) or more, and a gross vehicle weight rating (GVWR) of 4,536 kg (10,001 pounds) or more. The deadline for compliance with the rule is June 1, 2001. The partial suspension of the deadline will enable motor carriers operating container chassis to continue using those commercial motor vehicles without retroreflective sheeting (or reflex reflectors) until December 1, 2001. This action is in response to a petition from the Ocean Carrier Equipment Management Association, Intermodal Association of North America, Institute of Intermodal Container Lessors, and Association of American Railroads (collectively referred to as "the Petitioners").

DATES: The effective date for this rule is June 1, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366-4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1992, the National Highway Traffic Safety Administration (NHTSA) amended Federal Motor Vehicle Safety Standard (FMVSS) No. 108 (49 CFR 571.108), to require that trailers with an overall width of 2,032 mm (80 inches) or more and a GVWR greater than 4,536 kg (10,000 pounds), except trailers manufactured exclusively for use as offices or dwellings, be equipped on the sides and rear with a means for increasing their conspicuity (57 FR 58406). Trailer manufacturers are given a choice of installing either red and white retroreflective sheeting or reflex reflectors arranged in a red and white pattern. Manufacturers of retroreflective sheeting or reflex reflectors intended for use in satisfying these requirements must certify compliance of their product with FMVSS No. 108, whether the material is

used as original or replacement equipment. The effective date for the final rule was December 1, 1993.

FHWA Rulemaking and Congressional Action Concerning Retrofitting

On January 19, 1994, the FHWA published an ANPRM requesting comments on issues related to the application of conspicuity treatments to trailers manufactured prior to the effective date of the NHTSA's final rule on trailer conspicuity (59 FR 2811). The agency requested that commenters respond, at a minimum, to several specific questions listed in the notice. In addition to responding to those specific questions, the FHWA encouraged commenters to include a discussion of any other issues that the commenters believed were relevant to the rulemaking.

On August 6, 1996, the FHWA published a notice announcing that the agency had completed its review of the comments received in response to the ANPRM and that it would issue a notice of proposed rulemaking (61 FR 40781).

The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107) was enacted on June 9, 1998. Section 4025 required that the Secretary issue a final rule regarding the conspicuity of trailers manufactured before December 1, 1993, within one year of the enactment of TEA-21. The Secretary was to consider, at a minimum:

- (1) The cost-effectiveness of any requirement to retrofit trailers manufactured before December 1, 1993.
- (2) The extent to which motor carriers have voluntarily taken steps to increase equipment visibility.
- (3) Regulatory flexibility to accommodate differing trailer designs and configurations, such as tank trucks.

On June 19, 1998, the FHWA published a notice of proposed rulemaking to require motor carriers to install retroreflective tape or reflex reflectors within two years of the effective date of the final rule (63 FR 33611). The agency proposed allowing motor carriers a certain amount of flexibility in terms of the colors or color combinations during a 10-year period beginning on the effective date of the final rule, but requiring all older trailers to be equipped with conspicuity treatments identical to those mandated for new trailers at the end of the 10-year period. The proposal also specified the locations at which the retroreflective material would have to be applied to trailers during the phase-in period.

Although the FHWA drafted the NPRM prior to the enactment of the TEA-21, the agency reviewed section

4025 of the TEA-21 prior to publishing the NPRM. The FHWA considered the NPRM to be consistent with the three statutory criteria.

The FHWA published its final rule on trailer conspicuity retrofitting on March 31, 1999 (64 FR 15588). The final rule requires that motor carriers engaged in interstate commerce install retroreflective tape or reflex reflectors on the sides and rear of semitrailers and trailers that were manufactured prior to December 1, 1993, have an overall width of 2,032 mm (80 inches) or more, and a gross vehicle weight rating (GVWR) of 4,536 kg (10,001 pounds) or more. Motor carriers must install retroreflective tape or reflex reflectors by June 1, 2001. The final rule allows motor carriers a certain amount of flexibility in terms of the colors or color combinations during a 10-year period beginning on June 1, 1999, but requires that all older trailers be equipped with conspicuity treatments identical to those mandated for new trailers by June 1, 2009.

Petition for Rulemaking

On March 30, 2001, the Petitioners, in accordance with 49 CFR 389.31 (Petitions for Rulemaking), requested that the FMCSA extend the June 1, 2001, deadline for complying with the conspicuity retrofitting rule (49 CFR 393.13) until June 1, 2002. A copy of the petition for rulemaking is in the docket referenced at the beginning of this notice. The Petitioners argued that it is impossible for them to complete the required retrofitting by that date because they experienced technical problems applying retroreflective sheeting to the container chassis, and because unusually high volumes of intermodal freight over the past two years have made it difficult to schedule retrofitting of the chassis. The volume of intermodal freight and service demands have kept the equipment in use almost constantly. The Petitioners believe an extension of the deadline is necessary to avoid "potentially disastrous consequences" for U.S. trade.

The Petitioners estimate that the FMCSA's retrofitting requirements are applicable to 385,600 container chassis and 44,500 domestic intermodal trailers manufactured before December 1, 1993. They estimate that on June 1, 2001, there would be approximately 193,000 trailers used in intermodal service (181,000 container chassis and 12,000 domestic intermodal trailers) still in need of conspicuity material.

With regard to the technical difficulties, the Petitioners indicated that the initial retrofit methods proved to be unsuccessful, so it took several

months to research, develop, test, and implement alternative retrofit methods.

The Petitioners stated:

Although development of retrofit methods began as early as 1998, an effective method for chassis was not developed and widely implemented until February 2000, almost a year after the rule was issued. At the time the final rule was promulgated, intermodal trailers and chassis were retrofitted by applying adhesive reflective tape onto scrupulously cleaned trailer or chassis surfaces when the ambient air temperature and the temperature of the trailer or chassis surface was above 50 degrees Fahrenheit. Retrofitting in this way could only be accomplished in good weather (i.e., during peak shipping season months when equipment turn-around and unavailability is at its highest) or inside heated maintenance and repair facilities, which are limited in number and size.

Although intermodal trailers are still retrofitted in this way, the process proved unsatisfactory for chassis because of the materials involved. Most of the chassis in need of retrofit have a wax-based petroleum coating designed to protect against general "wear and tear," harsh road dirt and debris, and exposure to extreme weather conditions. Unfortunately, this coating has a serious unwanted side effect—it prevents reflective tape from adhering for any significant amount of time. Thus, reflective materials on chassis thought to have been retrofitted began falling off within a few weeks after application. An alternative retrofit method needed to be developed.

* * * * *

Eventually, a fastener was found that could penetrate steel without compromising its integrity, and that did not require electrical or air power, and could be applied outside a machine shop. The fastener, known as the "Hilti Fastener," utilizes a cold welding process to fasten the reflector-mounted aluminum strips onto chassis. To date, the Hilti Fastener is the fastest and most commonly-used method for lasting chassis retrofit. However, the Hilti Fastener was not available for general use until November of 1999, five months after the rule went into effect.

The Petitioners believe that if the FMCSA does not grant an extension of the June 1, 2001, deadline many of the non-compliant intermodal equipment would have to be taken out of revenue service until the vehicles could be retrofitted. A reduction in available equipment on June 1, which coincides with the beginning of the peak-shipping season, would adversely impact the

flow of goods into and out of the United States. There would be fewer chassis to handle an increasing number of intermodal containers.

FMCSA's Basis for Suspending the Deadline for Container Chassis

The FMCSA has carefully reviewed the Petitioners' request and believes that the technical problems associated with installing conspicuity treatments on container chassis warrants a suspension of the deadline as it applies to these particular CMVs. However, the agency does not believe the petitioners have presented a compelling argument for suspending the deadline for domestic intermodal trailers.

The agency accepts the Petitioners' prediction that as of June 1, 2001, approximately 237,000 container chassis and domestic intermodal trailers would have been retrofitted. The agency also accepts their estimate that there would be another 193,000 intermodal CMVs (181,000 container chassis and 12,000 domestic intermodal trailers) to retrofit. The technical problems the owners had attaching the conspicuity materials with adhesives appear to have played a major role in their failure to complete the retrofitting of all their chassis by June 1, 2001. However, the safety benefits of conspicuity treatments are significant and both the owners and operators should put forth much more aggressive efforts to ensure that the retrofitting is completed as soon as possible. A six-month extension should enable the owners to complete the retrofitting of most, if not all, of the remaining chassis, provided the task is handled with a greater sense of urgency than has been demonstrated to date.

The FMCSA is concerned that the Petitioners failed to resolve technical issues early on in the retrofitting process to ensure compliance with the June 1, 2001, deadline and that the agency was not notified of these problems until March 2001. The agency believes use of the Hilti Fastener process should help to ensure that most of the remaining container chassis are retrofitted by December 1, 2001.

The FMCSA understands the difficulties the owners of the container chassis have locating these vehicles. Efforts should be taken to improve the tracking of the chassis not only to comply with the conspicuity retrofitting rule, but also to ensure appropriate systematic inspection, repair, and maintenance of the chassis. It may even be necessary to authorize other parties to install conspicuity treatments on a reimbursable basis.

With regard to the Petitioners request to extend the deadline for retrofitting of

domestic intermodal trailers, the FMCSA does not believe sufficient technical justification has been provided to support the request. There is no indication that domestic intermodal trailers differ significantly from typical van-type trailers in terms of the surfaces on which the conspicuity treatments would be applied. While some of the logistics issues raised by the Petitioner may apply equally to container chassis and domestic intermodal trailer, the agency's primary reason for granting the partial suspension of the deadline is the unforeseen technical difficulty in retrofitting container chassis. Given the relatively small number of domestic intermodal trailers that would need to be retrofitted after June 1, 2001, the intermodal segment of the transportation industry could effectively manage an expedited program to retrofit those vehicles without a suspension of the deadline.

The safety benefits of the retrofitting rule are such that the agency must ensure that as many trailers as possible are retrofitted as soon as possible. The entities that offer intermodal container chassis and domestic intermodal trailers for transportation should use every reasonable means available to comply with the rule.

The FMCSA reviewed the NHTSA's recent technical report, "The Effectiveness of Retroreflective Tape on Heavy Trailers," March 2001, (DOT HS 809 222), to ensure that the agency's estimates of the safety benefits of the retrofitting rule were appropriate. The NHTSA report evaluates the effectiveness of retroreflective sheeting in enhancing the visibility of heavy trailers and reducing the incidence of passenger cars crashing into the sides and rear of trailers at nighttime. The study is based on a statistical analysis of 10,959 accident cases investigated by the Florida Highway Patrol and the Pennsylvania State Police from 1997 to 1999. The authors of the report indicate that conspicuity treatments reduced side and rear impacts into trailers in dark conditions (including "dark-not-lighted," "dark-lighted," "dawn," and "dusk") by 29 percent. In "dark-not-lighted" conditions, the conspicuity treatments reduced side and rear impact accidents by 41 percent. Conspicuity material reduced side and rear impacts that resulted in fatalities or injuries to drivers of any vehicle by 44 percent.

The FMCSA discussed the projected safety benefits of conspicuity material that meets the NHTSA requirement for new trailers in the preamble to the March 31, 1999, final rule requiring the retrofit of trailers manufactured before

December 1, 1993. As reported there, NHTSA estimated that retroreflective tape could lead to a 25 percent reduction in rear end collisions and a 15 percent reduction in side impact collisions. From data available at the time of the NHTSA's final rule implementing conspicuity enhancements, tractor-trailer combinations were involved in about 11,000 accidents per year in which they were struck in the side or rear at night. Within this group of accidents, about 8,700 injuries and about 540 fatalities occurred. The NHTSA indicated that the conspicuity requirements, when fully implemented, were expected to prevent, annually, 2,113 of these accidents. The NHTSA estimated 1,315 fewer injuries and about 80 fewer fatalities would occur.

The effectiveness study published in March 2001 indicates that when all heavy trailers have conspicuity treatments, the material will prevent approximately 7,800 accidents per year. Conspicuity treatments will prevent about 3,100 to 5,000 injuries, and 191 to 350 fatalities per year. Current information on the effectiveness of the conspicuity material on new trailers therefore strongly suggests that the safety benefits of retrofitting may be much greater than the agency estimated. As such, the FMCSA has an obligation to ensure that all trailers subject to its conspicuity retrofitting requirements, are equipped with the required retroreflective sheeting or reflex reflectors.

The FMCSA will continue to work with its State partners to ensure that motor carriers operating trailers, other than container chassis (as defined in 49 CFR 393.5), comply with the conspicuity requirements on and after June 1, 2001. The agency intends to ensure that motor carriers operating container chassis comply on and after December 1, 2001.

Rulemaking Analysis and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest.

In this case, notice and comment are impracticable. The final rule suspends the deadline for compliance with 49 CFR 393.13 for motor carriers operating intermodal container chassis until December 1, 2001. Because the Petitioners waited until March 30, 2001, to submit their request and supporting documentation, there was insufficient time for the FMCSA to complete a

notice and comment rulemaking in response to the petition. Therefore, the FMCSA finds good cause under 5 U.S.C. 553(b) to make this amendment effective without prior notice or opportunity for comment.

For the same reasons, the FMCSA finds, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for making the final rule effective upon issuance. Because the compliance date for the trailer conspicuity retrofitting rule (49 CFR 393.13) is June 1, 2001, the final rule must be effective on or before that date. The partial suspension of the deadline for compliance will remain in effect until December 1, 2001.

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

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. The final rule suspends the compliance date of § 393.13 until December 1, 2001, for motor carriers operating intermodal container chassis, while retaining the current compliance date for retrofitting trailers manufactured before December 1, 1993. Although the March 31, 1999, final rule establishing the current retrofitting requirement was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this partial suspension of the final rule as a significant action.

Regulatory Flexibility Act

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 the original requirements did not have a significant effect on a substantial number of small entities, and this suspension does not change those requirements.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have significant Federalism implications or limit the policymaking discretion of the States. Nothing in this document preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217,

Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*) that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This action has no information collection requirements.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the FMCSA amends title 49, Code of Federal Regulations, chapter III, part 393 as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 is revised to read as follows:

Authority: Sec. 1041(b) of Public Law 102-240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; 49 CFR 1.73.

2. Amend § 393.13 to revise paragraph (a) to read as follows:

§ 393.13 Retroreflective sheeting and reflex reflectors, requirements for semitrailers and trailers manufactured before December 1, 1993.

(a) *Applicability.* All trailers and semitrailers manufactured prior to December 1, 1993, which have an overall width of 2,032 mm (80 inches) or more and a gross vehicle weight rating of 4,536 kg (10,001 pounds) or more, except trailers that are manufactured exclusively for use as offices or dwellings, pole trailers (as defined in § 390.5 of this subchapter), and trailers transported in a driveaway-towaway operation, must be equipped with retroreflective sheeting or an array

of reflex reflectors that meet the requirements of this section. Motor carriers operating trailers, other than container chassis (as defined in § 393.5), have until June 1, 2001, to comply with the requirements of this section. Motor carriers operating container chassis have until December 1, 2001, to comply with the requirements of this section.

* * * * *

Issued on: June 1, 2001.

Stephen E. Barber,

Acting Deputy Administrator.

[FR Doc. 01-14287 Filed 6-1-01; 8:45 am]

BILLING CODE 4910-EX-U

Proposed Rules

Federal Register

Vol. 66, No. 109

Wednesday, June 6, 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.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 11

RIN 3095-ZA03

Prices and Availability of Federal Register Publications

AGENCY: Administrative Committee of the Federal Register.

ACTION: Proposed rule.

SUMMARY: The Administrative Committee of the Federal Register proposes increases in the prices charged for the paper and microfiche editions of **Federal Register** publications. The price changes would apply to the daily **Federal Register**, the **Federal Register** Index and LSA (List of CFR Sections Affected), the Code of Federal Regulations, and the Weekly Compilation of Presidential Documents. The proposed price increases would enable the Government Printing Office to recover more of the costs of producing and distributing **Federal Register** publications.

DATES: Comments will be accepted through July 6, 2001.

ADDRESSES: Comments should be addressed to Michael White. Written comments may be submitted by U.S. mail to the Office of the Federal Register (NF), National Archives and Records Administration, 700 Pennsylvania Ave., NW., Washington, DC 20408-0001, or by private delivery services to the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002. Comments may also be submitted by email to fedreg.legal@nara.gov, or by fax to 202-523-6866.

FOR FURTHER INFORMATION CONTACT: Michael White at 202-275-4292, ext. 275.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Register Act (44 U.S.C. Chapter 15), the Administrative Committee of the Federal Register is

responsible for establishing the prices charged for **Federal Register** publications. **Federal Register** publications are sold and distributed to the public by the Government Printing Office's (GPO) Superintendent of Documents. The Administrative Committee periodically reviews data submitted by the Superintendent of Documents to determine whether subscription rates and single copy prices of **Federal Register** publications produce sufficient revenue to keep pace with GPO's printing, handling and distribution costs, as well as postal rate increases. GPO receives no appropriation for any of the costs associated with producing **Federal Register** publications. Sales revenue must support the cost of the sales program. The proposed price increases would enable the Government Printing Office to recover more of the costs of producing and distributing **Federal Register** publications.

The data submitted by the Superintendent of Documents indicates that sales revenue is insufficient to cover the program costs of certain **Federal Register** publications. The shortfall in sales revenue is attributable to declining paper subscriptions, increases in GPO employee pay scales and benefits, higher paper prices, and a 12.7 percent increase in postal rates in 2001. This proposed rule takes into account the actual production, handling and distribution costs for paper publications over the past year and projected costs for the remainder of 2001.

The Administrative Committee published its last price change regulation on February 23, 2000 (65 FR 8843). In this action, the Administrative Committee proposes to increase the subscription rates for the paper editions of the daily **Federal Register**, the **Federal Register** Index and LSA (List of CFR Sections Affected), the Code of Federal Regulations (CFR), and the Weekly Compilation of Presidential Documents. The single copy price of the daily **Federal Register** would also increase. The single copy price of the Weekly Compilation of Presidential Documents would remain the same.

Prices for the microfiche editions of the **Federal Register** and the CFR result from a competitive bidding process. The subscription rates would increase for the microfiche editions of the daily

Federal Register and CFR. The single copy price for the microfiche editions of those publications would not change.

GPO has taken aggressive measures to achieve savings in its sales programs, such as reducing full time equivalent employee costs by 29 percent since 1994. However, in addition to the costs already cited, a number of other factors have combined to make it necessary to raise the price of paper publications. Part of the increase can be attributed to the rise in the volume of pages printed per subscription. The number of pages printed for each subscription to the **Federal Register** has increased by more than 10 percent since 1997 (66,934 pages in 1997 as compared with 77,234 pages in 2000). A sharp decline in the number of paid subscriptions has also contributed to the need for price increases. Since 1994, when the Administrative Committee began providing online access to the **Federal Register**, subscriptions have fallen by 73 percent. The decline in paper subscription revenue far exceeds the savings realized from reduced production costs. As a result, handling costs must be allocated over a much smaller base of orders, forcing increases in the prices of paper publications.

Subscribers who prefer the convenience of paper publications delivered to their place of business would bear a greater cost burden as a result of these price increases. But our customers also have free online access to **Federal Register** publications on the GPO Access service (<http://www.access.gpo.gov/nara>). The online customer base has expanded rapidly since free online service was introduced in late 1995. Information retrievals from the online edition of the **Federal Register** grew from just under 15 million documents in calendar year 1996 to over 61 million documents downloaded in calendar year 2000. Over the same period, information retrievals from the online edition of the CFR grew from about 725,000 documents to more than 93 million documents downloaded. Online **Federal Register** publications on GPO Access are now among the most frequently visited Federal web sites.

The success of the online publications demonstrates that the Administrative Committee is fulfilling its mission to provide the public with essential information on the functions, actions,

and regulatory requirements of the Federal government. At the same time, the Administrative Committee is constantly engaged in efforts to improve the quality of our online publications, including investments in new technology applications that will enhance e-government services to the public. In addition, GPO recently took new steps to significantly increase server capacity to meet the growing demand for online access to **Federal Register** publications. For members of the public who prefer to read the printed editions, GPO continues to provide free access to **Federal Register** publications at Federal depository libraries located throughout the nation under funding provided by Congress.

The changes to subscription prices in this proposal amount to a 9.6 percent increase for the paper edition of the **Federal Register** and a 9.2 percent increase for the printed CFR. The subscription price of the Weekly Compilation of Presidential Documents would increase by 12 percent. The price changes are reflected in proposed amendments to 1 CFR part 11. The following rates would be effective after the issuance of the final rule. The annual subscription rate for the daily **Federal Register** paper edition would increase from \$638 to \$699. For a combined **Federal Register**, **Federal Register** Index and LSA (List of CFR Sections Affected) subscription, the rate would increase from \$697 to \$764. The price of a single copy of the daily **Federal Register** paper edition would increase from \$9 to \$10. The annual subscription rate for the microfiche edition of the **Federal Register**, which includes the **Federal Register** Index and LSA, would increase from \$253 to \$264. The annual subscription price for the **Federal Register** Index increases from \$28 to \$30. The annual subscription price for the monthly LSA would increase from \$31 to \$35. The annual subscription rate for a full set of the CFR paper edition would increase from \$1094 to \$1195. The annual subscription rate for the microfiche edition of the CFR would increase from \$290 to \$298. The annual subscription rates for the Weekly Compilation of Presidential Documents would increase from \$92 to \$103 for delivery by non-priority mail and from \$151 to \$169 for delivery by first-class mail.

Regulatory Analysis

Executive Order 12866

The proposed rule has been drafted in accordance with Executive Order 12866, section 1(b), "Principles of Regulation." The Administrative Committee has

determined that this proposed rulemaking is not a significant regulatory action, as defined under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply to rate increases necessary to recover the costs to the Government for printing and distributing **Federal Register** publications. This action would not have a significant impact on small entities since it would not impose any substantive requirements, and any increased costs could be avoided by accessing **Federal Register** publications through the free GPO Access service on the Internet or at a Federal depository library.

Federalism

This proposed rule has no Federalism implications under Executive Order 13132. It would not impose compliance costs on State or local governments or preempt State law.

List of Subjects in 1 CFR Part 11

Code of Federal Regulations, **Federal Register**, Government publications, Weekly Compilation of Presidential Documents.

For the reasons discussed in the preamble, the Administrative Committee of the Federal Register proposes to amend part 11 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

PART 11—SUBSCRIPTIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. In § 11.2, revise paragraph (a) to read as follows:

§ 11.2 Federal Register.

(a) The subscription price for the paper edition of the daily **Federal Register**, including postage, is \$699 per year. A combined subscription to the daily **Federal Register**, the monthly **Federal Register** Index, and the monthly LSA (List of CFR Sections Affected), including postage, is \$764 per year for the paper edition, or \$264 per year for the microfiche edition. Six-month subscriptions to the paper and microfiche editions are also available at one-half the annual rate. Limited quantities of current or recent issues may be purchased for \$10 per copy for the paper edition, or \$2 per copy for the microfiche edition.

* * * * *

3. In § 11.3, revise paragraph (a) to read as follows:

§ 11.3 Code of Federal Regulations.

(a) The subscription price for a complete set of the Code of Federal Regulations, including postage, is \$1195 per year for the bound, paper edition, or \$298 per year for the microfiche edition. The Government Printing Office sells individual volumes of the paper edition of the Code of Federal Regulations at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of a single volume of the microfiche edition is \$2 per copy.

* * * * *

4. In § 11.6, revise paragraph (a) to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

(a) The subscription price for the paper edition of the Weekly Compilation of Presidential Documents is \$103 per year for delivery by non-priority mail, or \$169 per year for delivery by first-class mail. The price of an individual copy is \$4.

* * * * *

5. Revise § 11.7 to read as follows:

§ 11.7 Federal Register Index.

The annual subscription price for the monthly **Federal Register** Index, purchased separately, in paper form, is \$30.

6. Revise § 11.8 to read as follows:

§ 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is \$35.

By Order of the Committee.

Raymond A. Mosley,
Secretary, Administrative Committee of the
Federal Register.

[FR Doc. 01–14217 Filed 6–5–01; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–39–AD]

Airworthiness Directives; CFE Company Model CFE738–1–1B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to revise an existing airworthiness directive (AD), applicable to CFE Company Model CFE738-1-1B turbofan engines. That AD currently requires a one-time visual inspection of Stage 2 high pressure turbine (HPT) aft cooling plates for nicks, dents, raised metal, and scratches, and if necessary, repair of the cooling plates or replacement with serviceable parts. This proposal is prompted by an updated alert service bulletin (ASB) that reduces the number of stage 2 HPT aft cooling plates affected by this AD and identifies the applicable engines by engine serial numbers (SN's). In the event that the affected gas generator modules containing the affected parts have been transferred to another engine, the SN's of those gas generator modules have been added to this AD. The actions specified by the proposed AD are intended to prevent stage 2 HPT aft cooling plate failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by August 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-39-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from CFE Company, Data Distribution, MS 64-03/2101-201, P.O. Box 29003, Phoenix, AZ 85038-9003; telephone (602) 365-2493, fax (602) 365-5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT:

Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (781) 238-7744, fax: (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-39-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-39-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On December 29, 1999, the FAA issued AD 99-27-16, Amendment 39-11497 (65 FR 691, January 6, 2000), to require a one-time visual inspection of 72 Stage 2 HPT aft cooling plates for nicks, dents, raised metal, and scratches. If any nicks, dents, raised metal, or scratches were found, that AD also required repair of the cooling plates or replacement with serviceable parts. That action was prompted by reports of Stage 2 HPT aft cooling plates that were dented during the assembly of the cooling plate to the Stage 2 disk due to raised metal on the stage 2 HPT disk post aft mating surface. The raised metal condition on the stage 2 HPT disk post was caused by an improperly installed locating pin in the assembly tool. That condition, if not corrected, could result in HPT aft cooling plate failure, which could result in an uncontained engine failure and damage to the airplane. Since AD 99-27-16 was issued, CFE

Company has isolated the observed assembly damage to a known replacement of the locating pin in the assembly tooling. It has been determined that only ten of the original 72 HPT cooling plate/stage 2 disk assemblies were assembled before tool correction occurred. Records show these ten HPT cooling plate/stage 2 disk assemblies were subsequently assembled in ten gas generator modules, S/N's 800421-800430. These gas generator modules, along with the engines on which these modules were installed, are listed in this AD.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of CFE Company Alert Service Bulletin (ASB) CFE738-A72-8031, Revision 2, dated October 17, 2000, that describes the dimensional inspection procedures for indentation depth on stage 2 HPT aft cooling plates, inspection of the stage 2 HPT rotor disk for raised metal, and the acceptance and repair criteria of the stage 2 HPT aft cooling plate and HPT rotor disk.

Differences Between This AD and the Manufacturer's Service Information

Although ASB CFE738-A72-8031, Revision 2, dated October 17, 2000, identifies ten engines by SN, the FAA is also listing the ten gas generator module SN's in which the affected HPT cooling plate/stage 2 HPT disk assemblies are installed. This listing is made to assure that the gas generator modules containing the affected parts are identified and inspected regardless of which engine they are installed on. Gas generator modules may not necessarily stay installed in one and only one engine.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, on gas generator modules identified by SN, a one-time visual inspection of stage 2 HPT aft cooling plates for nicks, dents, raised metal, and scratches, and if present, replacement with serviceable parts, or, dimensional inspection of indentation depth, repair if indentation is within acceptable limits, and if not, replacement with serviceable parts. This AD would also require inspection of the stage 2 HPT rotor disk post aft surface which mates with the stage 2 HPT aft cooling plate, for raised metal, and, removal of the raised metal, if present, or replacement with a serviceable part. The inspections would be required at the next shop visit

after the effective date of this AD where the HPT assembly is sufficiently disassembled to afford access to the stage 2 HPT aft cooling plate, but not later than 4,500 part cycles-since-new (CSN) in accordance with the ASB described previously.

Economic Impact

There are approximately ten engines of the affected design in the worldwide fleet. The FAA estimates that nine engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately four work hours per engine to accomplish the proposed inspection if the inspection did not take place during scheduled maintenance, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$1,536 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be \$15,484.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11497 (65 FR 691, January 6, 2000), and by adding a new airworthiness directive, to read as follows:

CFE Company: Docket No. 99–NE–39–AD. Revises AD 99–27–16, Amendment 39–11497.

Applicability

This airworthiness directive (AD) is applicable to CFE Model CFE738–1–1B turbofan engines, part number (P/N) 3050000–5, with gas generator modules P/N 6091T09G01, serial numbers (SN's) 800421, 800422, 800423, 800424, 800425, 800426, 800427, 800428, 800429, and 800430 installed. These modules are currently installed in engine SN's 105323, 105324, 105325, 105326, 105328, 105329, 105331, 105332, 105333, and 105392. These engines are installed on, but not limited to Dassault-Breguet Falcon 2000 series airplanes.

Note 1: This AD applies to each engine 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 engines 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 (b) 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

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

To prevent stage 2 high pressure turbine (HPT) aft cooling plate failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections and Follow-On Actions

(a) At the next engine shop visit after the effective date of this AD where the HPT assembly is sufficiently disassembled to afford access to the Stage 2 HPT aft cooling plate, but not later than 4,500 part cycles-since-new (CSN), accomplish the following:

(1) Inspect the stage 2 HPT aft cooling plate for nicks, dents, and scratches on surface D in accordance with the requirements of CFE Alert Service Bulletin (ASB) No. CFE738–A72–8031, Revision 2, dated October 17, 2000, paragraph 2.B.(1).

(2) Repair those stage 2 HPT aft cooling plates with indentation 0.003 inch deep or less in accordance with ASB No. CFE738–

A72–8031, Revision 2, dated October 17, 2000, paragraph 2.B.(1).

(3) Remove from service prior to further flight those stage 2 HPT aft cooling plates that have nicks, dents, and/or scratches that exceed the acceptance limits in accordance with ASB No. CFE738–A72–8031, Revision 2, dated October 17, 2000, paragraph 2.B.(1), and replace with serviceable parts.

(4) Inspect the stage 2 HPT rotor disk post aft mating surface for raised metal, and remove raised metal if present in accordance with ASB No. CFE738–A72–8031, Revision 2, dated October 17, 2000, paragraph 2.B.(2).

Alternative Methods of Compliance

(b) 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, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Issued in Burlington, Massachusetts, on May 25, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–14146 Filed 6–5–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Gulfstream Aerospace Corporation Model G–159 airplanes. This proposal would require repetitive non-destructive testing inspections to detect corrosion of the skin of certain structural assemblies, and corrective action, if necessary. This

proposal also would require x-ray and ultrasonic inspections to detect corrosion and cracking of the splicing of certain structural assemblies, and repair, if necessary. This action is necessary to detect and correct corrosion of the skin of certain structural assemblies, which could cause local instability failures of the wing under certain load conditions and result in degradation of wing capability. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 23, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 96-NM-143-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 96-NM-143-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 the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Neil Berryman, Aerospace Engineer, Airframe and Propulsion Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337-2748; telephone (770) 703-6087; fax (770) 703-6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be

considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-143-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 96-NM-143-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The method of fabrication on Gulfstream Aerospace Corporation Model G-159 airplanes of spotwelding to join two layers of material precludes the use of any corrosion inhibitor on the faying surfaces. Therefore, corrosion can form by the entrance and entrapment of moisture or other corrosive agents between layers of the metal. The FAA has received reports that exfoliation corrosion has been found in the lower layer of the lower wing plank splices. This corrosion typically follows the grain boundaries into the ramp-up area. As a consequence of such corrosion, cracking may occur in the risers adjacent to the splices of the lower wing planks. This action is necessary to detect and correct corrosion of the skin of certain structural assemblies, which could cause local instability failures of the wing under certain load conditions

and result in degradation of wing capability.

Explanation of Relevant Service Information

The FAA has reviewed and approved Gulfstream Customer Bulletin (CB) No. 337, dated December 10, 1993, which describes procedures for certain repetitive non-destructive testing (NDT) inspections to detect corrosion on certain areas (ailerons, elevators, rudder, flaps, horizontal stabilizer, vertical stabilizer, and aft fuselage skins, as well as lower wing plank splices). The CB also describes procedures for replacing components, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Gulfstream has also issued Gulfstream Tool No. ST905-377, an x-ray negative that is a comparison chart, which describes specific levels of corrosion, and describes criteria for determining those levels of corrosion ("light," "moderate," and "severe").

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the CB and the Proposed Rule

Operators should note that the Gulfstream CB recommends that the compliance time for the initial NDT inspections should be 18 months from the release of the CB (December 10, 1993). However, this proposed AD would require the initial inspection within 9 months after the effective date of the AD. Operators also should note that, although the Gulfstream CB does not specify certain corrective actions for levels of corrosion, this proposed AD would require shortened repetitive intervals for the NDT inspections based on certain levels of corrosion, or replacement of the corroded component with a serviceable component.

Cost Impact

There are approximately 144 Gulfstream Model G-159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 71 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per airplane to accomplish the

proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$340,800, or \$4,800 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace Corporation: Docket 96–NM–143–AD.

Applicability: All Model G–159 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 detect and correct corrosion of the skin of certain structural assemblies, which could cause local instability failures of the wing under certain load conditions and result in degradation of wing capability; accomplish the following:

(a) Within 9 months after the effective date of this AD, perform a non-destructive test (NDT) to detect corrosion of the skins of the aileron rudder, rudder trim tab, flap, evaluator, fuselage, vertical stabilizer, and horizontal stabilizer; in accordance with Gulfstream Aerospace GI Customer Bulletin No. 337, dated December 10, 1993.

(1) If no corrosion is detected, repeat the NDT inspections thereafter at intervals not to exceed 18 months.

(2) If any corrosion is detected that meets the criteria of "light" corrosion, as defined by Gulfstream Tool No. ST905–377, repeat the NDT inspections of that component thereafter at intervals not to exceed 12 months.

(3) If any corrosion is detected that meets the criteria of "moderate" corrosion, as defined by Gulfstream Tool No. ST905–377, repeat the NDT inspection of that component thereafter at intervals not to exceed 9 months.

(4) If any corrosion is detected that meets the criteria of "severe" corrosion, as defined by Gulfstream Tool No. ST905–377, prior to further flight, replace the component with a serviceable component, in accordance with the Gulfstream I Maintenance Manual.

(b) Within 9 months after the effective date of this AD, perform a non-destructive test (NDT) to detect corrosion of the lower wing plank splices, in accordance with Gulfstream Aerospace GI Customer Bulletin No. 337, dated December 10, 1993.

(1) If no corrosion is detected, repeat the NDT inspection at intervals not to exceed 18 months.

(2) If any corrosion is detected, prior to further flight, repair in accordance with the customer bulletin.

Reporting Requirement

(c) Within 10 days of performing the inspections required by paragraph (a) of this AD: Submit a report of inspection findings (both positive and negative) to Gulfstream Aerospace Corporation; Attention: Technical Operations—Mail Station D–10; P.O. Box 2206; Savannah, Georgia 31402–0080. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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, Wichita 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, Wichita ACO.

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

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.

Issued in Renton, Washington, on May 29, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–14145 Filed 6–5–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–290–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; and C–9 (military) airplanes.

This proposal would require replacing the transformer ballast assembly in the first officer's console with a new, improved ballast assembly. This action is necessary to prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 23, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-290-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99-NM-290-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 the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5344; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address

specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-290-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-290-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of instances of smoke emanating from the ballast transformers of the cockpit fluorescent lights on McDonnell Douglas Model DC-9 series airplanes. Investigation revealed that aging fluorescent tubes result in a higher power demand on the ballast transformers, which causes the transformer to overheat. This condition, if not corrected, could result in smoke in the cockpit.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of McDonnell Douglas

Model DC-9-10, -20, -30, -40, and -50 series airplanes, and C-9 (military) 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 proposed airworthiness directive (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.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9-33A114, dated November 1, 1999. The service bulletin describes procedures for replacing the transformer ballast assembly in the first officer's console with a new, improved ballast assembly. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the action specified in the service bulletin described previously.

Cost Impact

There are approximately 836 Model DC-9-10, -20, -30, -40, and -50 series airplanes, and C-9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 543 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost between \$1,379 and \$1,860 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between \$781,377 and \$1,042,560, or \$1,439 or \$1,920 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time

required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 99–NM–290–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; and C–9 (military) airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–33A114, dated November 1, 1999; 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 prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit, accomplish the following:

Replacement

(a) Within 12 months after the effective date of the AD, replace the transformer ballast assembly from the first officer's console with a new, improved transformer ballast assembly, in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A114, dated November 1, 1999.

Spares

(b) As of the effective date of this AD, no person shall install a transformer assembly, part number BA170–1, –11, –21, or "MOD.B, on any airplane.

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 2: 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 Permit

(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.

Issued in Renton, Washington, on May 29, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–14144 Filed 6–5–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–042–FOR; North Dakota State Program Amendment XXXI]

Permanent Program and Abandoned Mine Land Reclamation Plan Submissions; North Dakota

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposes very minor revisions to its statute concerning surface coal mining and reclamation operations such as changing the name of the "Superintendent of the State Historical Board" to the "Director of the State Historical Society," and changing some of the language in the statute to make it plainer and easier to understand.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. July 6, 2001. If requested, we will hold a public hearing on the amendment on July 2, 2001. We will accept requests to speak until 4 p.m., m.d.t. on June 21, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Casper Field Office. Guy Padgett, Casper Field Office

Director
Office of Surface Mining Reclamation and Enforcement
100 East "B" Street
Federal Building, Room 2128
Casper, WY 82601–1918
James R. Deutsch, Director
Reclamation Division
North Dakota Public Service
Commission

600 E. Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480
Telephone: 701/328-2400

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Casper Field Office Director, Telephone: 307/261-6550. Internet: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program.
- II. Description of the Proposed Amendment.
- III. Public Comment Procedures.
- IV. Procedural Determinations.

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15 and 934.30.

II. Description of the Proposed Amendment

By letter dated May 9, 2001, North Dakota sent us a proposed amendment to its program (North Dakota State Program Amendment XXXI, administrative record No. ND-FF-01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, North Dakota proposes very minor changes to that part of its statute dealing with surface coal mining and reclamation operations (North Dakota Century Code 38-14.1). Specifically, the "Superintendent of the State Historical Board" has been changed to the "Director of the State Historical Society." In addition, the language in this statute was revised to make it plainer and easier to understand, such as deleting "thereby," "such," "prior to," etc.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), OSM requests your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Casper Field Office.

Electronic Comments

Please submit Internet comments as an ASCII, WordPerfect, or Word avoiding file the use of special characters and any form of encryption. Please also include "Attn: SPATS No. ND-042-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261-6550.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on June 21, 2001. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak

has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the

roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual

effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 2001.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 01-14227 Filed 6-5-01; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-6992-5]

Project XL Site-Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Hopewell Junction, New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing this rule to implement a pilot project under the Project XL program that would provide site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the International Business Machines Corporation (IBM) East Fishkill semiconductor manufacturing facility in Hopewell Junction, New York. The principal objective of this IBM East Fishkill XL project is to determine whether the wastewater treatment sludge resulting,

in part, from the treatment of wastewaters from electroplating operations (and therefore meeting the listing description for F006 Hazardous Waste) may be used as an ingredient in the manufacture of cement in an environmentally sound manner without RCRA regulatory controls.

As a result of this XL project, the Agency expects to receive data with regard to the effectiveness and safety of using IBM's wastewater treatment sludge as an ingredient in the manufacture of cement. To gather the information needed to make a determination that IBM's sludge need not be regulated as a RCRA hazardous waste in order to protect human health and the environment when recycled as an ingredient in cement, today's proposed rule, when finalized, will provide a conditional exclusion for IBM's wastewater treatment sludge from the definition of solid waste, thus allowing for the recycling scenario to be implemented. IBM will be required to submit periodic reports containing pertinent information regarding this XL project. Such data could ultimately be useful in supporting any future EPA regulatory initiatives regarding the recycling of F006 to make cement products. EPA does not expect, however, that this XL project alone will generate substantial amounts of data on the wide variety of other F006 wastestreams that could potentially be used to make cement; such additional data would be required before EPA would be in a position to develop a national rulemaking for this particular recycling scenario.

DATES: Public Comments: Comments on the proposed rule must be received on or before July 6, 2001. All comments should be submitted in writing to the address listed below.

Public Hearing: Commenters may request a public hearing by June 20, 2001 during the public comment period. Commenters requesting a public hearing should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so by June 27, 2001, during the last week of the public comment period. Requests for a public hearing should be submitted to the address below. If a public hearing is scheduled, the date, time, and location will be available through a **Federal Register** notice or by contacting Mr. Sam Kerns at the U.S. EPA Region 2 office.

ADDRESSES: *Comments:* Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection

Agency, 1200 Pennsylvania Ave. NW., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F-2001-IB2P-FFFFF.

Request for a Hearing: Requests for a hearing should be mailed to the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F-2001-IB2P-FFFFF. A copy should also be sent to Mr. Sam Kerns at the U.S. EPA Region 2 office. Mr. Kerns may be contacted at the following address: U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007-1866, (212) 637-4139.

Viewing Project Materials: A docket containing the proposed rule, Final Project Agreement, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 am to 4:00 pm Monday through Friday, excluding Federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603-9230. Refer to RCRA docket number F-2001-IB2P-FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the world wide web at <http://www.epa.gov/projectxl/>.

A duplicate copy of the docket is available for inspection and copying at the U.S. EPA Region 2 Library, 290 Broadway, New York, NY 10007-1866, during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Sam Kerns or Ms. Aleksandra Dobkowski-Joy in advance, by telephoning (212) 637-4139 or (212) 637-3676, respectively.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Kerns or Ms. Aleksandra Dobkowski-Joy, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007-1866. Mr. Kerns can be reached at (212) 637-4139 (or kerns.sam@epa.gov) and Ms. Dobkowski-Joy can be reached at (212) 637-3676 (or dobkowski.aleksandra@epa.gov). Further information on today's action may also be obtained on the world wide web at <http://www.epa.gov/projectxl/>.

SUPPLEMENTARY INFORMATION: This pilot project assesses the appropriateness of excluding from the RCRA regulatory definition of solid waste the wastewater treatment sludge (designated as F006 Hazardous Waste) generated by one of the two fluoride/heavy metal wastewater treatment plants (the plant designated as B/690 West Complex by IBM) on the IBM East Fishkill facility when the sludge is being used as an ingredient in the manufacture of cement, and to characterize those factors that may determine whether similar sludges should also be excluded from RCRA regulatory controls when recycled in the same manner. This proposed rule is not intended to apply to any other hazardous wastes generated and/or managed at the IBM facility, although wastewater treatment sludge (also designated as F006 Hazardous Waste) generated by the other wastewater treatment plant (the B/386 East Complex) at the facility may become eligible in the future once a Final Project Agreement (or addendum to the current Final Project Agreement) is signed allowing for the additional sludge to be included in this project. This proposed rule does not apply to any wastewater treatment sludges generated at other facilities.

The duration of this XL pilot project is five years. The site-specific conditional exclusion from the definition of solid waste being proposed in today's notice includes a "sunset provision" which will automatically terminate the exclusion 5 years from the effective date of the final rulemaking promulgated to allow for the XL project to be implemented. (A "sunset provision" is typically included in regulatory changes to facilitate XL pilot projects.) Towards the end of the term of this XL project, EPA, the New York State Department of Environmental Conservation (NYSDEC), and IBM will evaluate the success of the pilot project. If the project is determined to be successful, EPA may consider expanding the scope of the exclusion to the national level (by rulemaking). Although EPA does not expect that this XL project by itself can generate all the data that would be necessary on the wide variety of other F006 wastestreams that could potentially be used to make cement to proceed with a national rulemaking, the data generated from this project may be useful in supporting such national-level rulemaking.

Today's proposed rulemaking will not in any way affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comments on this rulemaking. EPA will publish responses

to comments in a subsequent final rule. The XL project will enter the implementation phase when the final rule is promulgated by EPA, and NYSDEC has undertaken appropriate action to allow the project to be implemented. (The Final Project Agreement has already been signed by EPA, NYSDEC, and IBM.)

The terms of the overall XL project are contained in a Final Project Agreement (FPA) which was the subject of a Notice of Availability published in the **Federal Register** on September 1, 2000 (65 FR 53298) and which was signed by EPA, NYSDEC and IBM on September 29, 2000. The Final Project Agreement (FPA) is available to the public at the EPA Docket in Washington, DC, in the U.S. EPA Region 2 library, at the IBM East Fishkill facility, and on the world wide web at <http://www.epa.gov/projectxl/>.

Outline of Today's Proposal

The information presented in this preamble is organized as follows:

- I. Authority
- II. Overview of Project XL
- III. Overview of the IBM East Fishkill XL Pilot Project
 - A. To Which Facilities Will the Proposed Rule Apply?
 - B. What Problems will the IBM East Fishkill XL Project Attempt to Address?
 1. Background on the Definition of Solid Waste
 2. Legitimate Recycling Determination
 3. Site-Specific Considerations at the IBM East Fishkill Facility
 - C. What Solutions are Proposed by the IBM East Fishkill XL Project?
 - D. What Regulatory Changes Will Be Necessary to Implement this Project?
 1. Federal Regulatory Changes
 2. State Regulatory Changes
 - E. Why Is EPA Supporting this Approach to Removing the Electroplating Sludge From the Definition of Solid Waste?
 - F. How Have Various Stakeholders Been Involved in This Project?
 - G. How Will This Project Result in Cost Savings and Paperwork Reduction?
 - H. What Are the Terms of the IBM East Fishkill XL Project and How Will They Be Enforced?
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1. Applicability of Rules in Authorized States
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- I. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Governments?
- J. Does this Rule Comply With the National Technology Transfer and Advancement Act?

I. Authority

EPA is publishing this proposed regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, 6937, 6938, and 6974).

II. Overview of Project XL

The Final Project Agreement (FPA) sets forth the intentions of EPA, NYSDEC, and the IBM East Fishkill facility in Hopewell Junction, NY with regard to a project developed under Project XL, which is an EPA initiative to allow regulated entities to achieve better environmental results with limited regulatory flexibility. The proposed regulation will allow implementation of the project. Project XL—"eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the National Performance Review and the Agency's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to request regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably-anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility

to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to encourage EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, EPA may try out approaches or legal interpretations that depart from, or are even inconsistent with, longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting the statutes that it implements. EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs,

is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

XL Criteria

To participate in Project XL, applicants must develop alternative environmental performance objectives pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. To be selected, the XL projects must have the full support of the affected Federal, State, local and tribal agencies.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document. For further discussion as to how the IBM East Fishkill XL project addresses the XL criteria, readers should refer to the Final Project Agreement available from the EPA RCRA docket, the U.S. EPA Region 2 library, or the Project XL web page (see **ADDRESSES** section of today's preamble).

XL Program Phases

The Project XL program is compartmentalized into four basic developmental phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that they would like EPA to consider as an XL pilot project; the second phase where the project sponsor works with EPA and interested stakeholders in developing an XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing a Final Project Agreement and legal mechanism. After promulgation of the final rule (or other legal mechanism) that provides the flexibility required for the XL pilot project, and after the Final Project Agreement has been signed by all designated parties, the XL pilot project proceeds on to implementation and evaluation.

Final Project Agreement

The Final Project Agreement (FPA) is a written voluntary agreement between the project sponsor and regulatory

agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria, and the expectation of the Agency that the XL project will meet those criteria. The FPA identifies performance goals and indicators that track whether the project is yielding the expected environmental benefits, and specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the FPA, including dispute resolution and termination. The FPA for this XL project is available for review in the docket for today's action, and is also available on the world wide web at <http://www.epa.gov/projectxl/>.

III. Overview of the IBM East Fishkill XL Project

EPA is today requesting comments on the proposed rule to implement key provisions of this Project XL initiative. Today's proposed rule would facilitate implementation of the FPA that has been developed by EPA, the New York State Department of Environmental Conservation (NYSDEC), the IBM East Fishkill facility, and other stakeholders. Today's proposed rule, when finalized, would not be effective in New York until the State has made conforming changes (or used other legal mechanisms) to modify its hazardous waste program.

A. To Which Facilities Will the Proposed Rule Apply?

This proposed rule, when finalized, would apply only to the IBM East Fishkill facility in Hopewell Junction, NY. Further, the regulatory modification being proposed is intended to only apply to a portion of the total F006 electroplating sludge generated at the facility (specifically, the sludge designated as B/690 West Complex sludge, which is the subject of the Final Project Agreement (FPA) included in the docket for this proposal). However, it should be noted that IBM expects to implement waste minimization technologies to remove hazardous constituents from the sludge generated at a separate wastewater treatment plant (i.e., the B/386 East Complex), pursue another FPA (or addendum to the current FPA), and include the B/386 East Complex wastewater treatment sludge in this XL pilot project. The regulatory modification being proposed today has been crafted to allow for the future inclusion of the B/386 East Complex sludge in this XL project without an additional rulemaking. A more detailed discussion of the regulatory modification is presented in

section III. E. A more detailed discussion of the sludge that is the focus of this XL project is presented in Section III. B. 3.

B. What Problems Will the IBM East Fishkill XL Project Attempt to Address?

IBM believes RCRA oversight (and the regulatory requirements such oversight imposes) does not provide an increase in protection of human health and the environment when applied to the recycling scenario involving the use of IBM's wastewater treatment sludge as an ingredient in the production of cement. Rather, IBM believes the RCRA regulatory requirements serve as a disincentive to an otherwise viable and environmentally sound recycling scenario.

1. Background on the Definition of Solid Waste

On January 4, 1985 the Agency promulgated the basic regulatory definition of solid waste (see 50 FR 614). Under the current RCRA regulatory framework, a hazardous secondary material¹ being recycled may meet the definition of solid waste, depending on the type of secondary material (e.g., spent material, by-product, sludge) and the type of recycling (e.g., reclamation, use as an ingredient, use constituting disposal). (See 40 CFR 261.2.) As provided at 40 CFR 261.2(e)(1)(i), a hazardous secondary material that is used as an ingredient in an industrial process to make a product is excluded from the definition of solid waste. However, 40 CFR 261.2(e)(2)(i) limits the (e)(1)(i) exclusion such that materials used to produce products that are applied to the land are not excluded. As explained in the preamble to the January 4, 1985 rulemaking, RCRA jurisdiction over hazardous secondary materials that are used on the land is based in part on the fact that the environmental impact of such use is basically the same as the environmental impact of conventional land disposal (see 50 FR at 628). Indeed, the potential impact in many cases is worse because there are more potential human environmental exposure pathways for waste-derived products than there are for landfilled wastes (see *Association of Battery Recyclers v. EPA*, 208 F. 3d. 1047 (D.C. Cir. 2000); 53 FR at 17605 (May 17, 1988)). Also, as a

¹ Throughout this preamble, as done in many previous RCRA rulemakings, EPA uses the term "secondary material" as a convenient means of referring to a material that may or may not be a solid and hazardous waste when it is recycled. See footnote number 4, 50 FR at 616 (January 4, 1985). Generally, "secondary materials" do not include virgin raw materials or products.

generalization, products that are used on the land are of relatively low value and seldom have product specifications that address the potential presence of hazardous constituents.

Therefore, a hazardous secondary material (such as IBM's F006 wastewater treatment sludge) that is used as a legitimate ingredient to produce cement (presuming that the cement will be used on the land) is subject to regulation as a hazardous waste, including among other things, the need for a Hazardous Waste Manifest (and hazardous waste transporter), and possibly storage permits at the recycling facility (in this case, a cement manufacturer). And, while the waste-derived product (i.e., the cement made using the sludge as an ingredient) is exempt from any further regulatory requirements pursuant to 40 CFR 266.20(b), assuming it meets the applicable treatment standards (which are the same standards the waste would have to meet prior to land disposal), the waste-derived product remains a hazardous waste within RCRA jurisdiction. It is the application of this regulatory framework that IBM believes provides no environmental benefit and serves as a disincentive to an environmentally sound recycling scenario for the sludge that is the focus of today's proposal.

2. Legitimate Recycling Determination

Inherent to the regulatory definition of solid waste as it applies to hazardous secondary materials that are recycled is the concept that the recycling actually be "legitimate recycling" as opposed to "sham recycling," which is treatment and/or disposal (including disposal through incorporation into a product) of a hazardous secondary material under the guise of recycling (50 FR at 638, January 4, 1985). This determination is not always clear-cut and often involves assessing the intent of the activity by evaluating circumstantial evidence. Basically, the determination rests on whether the secondary material is sufficiently "commodity-like." This entails an evaluation of whether the material truly has value as a raw material/product and whether the recycling process is likely to release hazardous constituents (or otherwise pose risks to human health and the environment) that are different from or greater than those from the processing of an analogous raw material/product. The criteria used to evaluate whether a secondary material is legitimately being recycled are presented in an April 26, 1989 memorandum from Sylvia K. Lowrance, Director of the Office of Solid Waste, to the Hazardous Waste

Management Division Directors in Regions I–X, entitled “F006 Recycling.”² The following discussion presents the criteria and EPA’s evaluation of the criteria in the context of the recycling scenario that is the focus of this XL project. It should be noted that these criteria are intended to be used as a means of focusing the overall consideration of a specific recycling scenario and are meant to be taken as a whole (which, in effect, means that a negative response to one or more criteria does not necessarily mean that the recycling scenario is a sham).

(1) Is the secondary material similar to an analogous raw material or product?

This is discussed in detail below.

(2) What degree of processing is required to produce a finished product?

The sludge must undergo significant processing to produce a finished product, consistent with the processing the analogous raw materials must undergo to produce cement. No special processing of the sludge is required.

(3) What is the value of the secondary material?

The sludge will likely have a negative monetary value (IBM expects to pay a fee to a cement manufacturer receiving the sludge). However, the Agency acknowledges that the pure economics of a recycling scenario are difficult to gauge because RCRA regulations are a very real factor influencing the economics of such scenarios. If RCRA did not exist, it is quite possible that a cement manufacturer would pay to receive such a high-calcium containing material (comparable to the price paid for analogous raw materials, such as limestone). However, due to the existence of the RCRA regulations which, in effect, impose costs on IBM for the management of the sludge, a cement manufacturer can charge a fee for the sludge (presumably less than the fee charged by a disposal facility), giving the sludge a negative value.

(4) Is there a guaranteed market for the end product?

Cement is a widely available commercial product with a proven market. As the applications for cement vary, so do specifications for the various products required. Customers of cement kilns will continue to demand that their product specifications be met whether or not IBM’s sludge is among the raw materials used to manufacture their product. In the FPA for this project, IBM

agreed that the cement kiln which recycles its sludge will provide to IBM a certification that the sludge delivered to the kiln (from the IBM East Fishkill facility) was used as an ingredient in the manufacture of cement in accordance with both product specifications and generally accepted cement industry standards. Accordingly, there will be a guaranteed market for cement which meets product specifications. If, however, the cement product fails to meet specifications due to the use of the sludge as an ingredient and cannot be sold (or reprocessed and sold), then it must be managed as a hazardous waste in accordance with all applicable RCRA regulations.

(5) Is the secondary material handled in a manner consistent with the raw material/product it replaces?

No. Consistent with the experimental nature of XL projects, the sludge will be managed more carefully than the raw material it replaces. As agreed to in the Final Project Agreement (FPA), IBM will ensure that the sludge is managed to prevent releases to the environment. IBM has assured the other signatories to the FPA that a cement manufacturer must agree to manage the sludge protectively to receive the sludge. Accordingly, management of the sludge to prevent releases is being included as a condition of the site-specific exclusion being proposed today. Another condition of the exclusion is a requirement for IBM to submit semi-annual reports to the agencies detailing the volumes of sludge recycled as part of this XL project.

(6) Other relevant factors.

This is a broad criterion that allows for the consideration of other factors not otherwise evaluated. In this specific case, the fact that this recycling scenario was conducted previously and deemed to be successful by IBM (as discussed in section III. B. 3.) was another factor considered. Also, the fact that this recycling scenario will be conducted in the context of an XL project, which assumes a certain level of regulatory oversight by the Regional office and State regulatory agency, was considered.

For hazardous secondary materials that are used as ingredients to produce a product, one of the key considerations in evaluating whether the secondary material is similar to an analogous raw material is a comparison of the constituent compositions of both the hazardous secondary material and the analogous raw material it replaces.³

³ In this case, the Agency notes that by comparing a secondary material to an analogous raw material, one can ascertain the expected impact of using the secondary material as an ingredient instead of the

Naturally, the hazardous secondary material must contribute useful or necessary constituents to the production of the product, as do the analogous raw materials. However, to the extent that the hazardous secondary material contains unnecessary (to the product or production process) hazardous constituents at higher concentrations than found in the analogous raw materials, or hazardous constituents not found in the analogous raw materials, one could infer that the constituents are being treated or disposed under the guise of recycling, even if some portion of the secondary material is useful to the production process (see the April 26, 1989 memorandum from Sylvia K. Lowrance, Director of the Office of Solid Waste, to the Hazardous Waste Management Division Directors in Regions I–X entitled “F006 Recycling” available in the docket for this proposal).

Several considerations are worth noting concerning the similarity of IBM’s sludge to the analogous raw materials used to produce cement. A comparative analysis of representative samples of IBM’s wastewater treatment sludge and samples of analogous raw materials (which, in this case, is taken to be the combination of all the feedstocks that normally make up the feedstream to the cement manufacturing process rather than an individual component, such as limestone) from various cement manufacturing facilities indicates that certain heavy metals (specifically lead, cadmium,⁴ and chromium) may be present at slightly higher concentrations in the sludge than in the analogous raw materials. Additionally, the wastewater treatment sludge contains somewhat higher levels of fluoride than found in the analogous raw materials. However, given the variability in both IBM’s wastewater treatment sludge and in the raw material

raw material. If the physical/chemical compositions of both materials are comparable, the product made with the secondary material would be expected to have the same characteristics and qualities as the product made with the analogous raw material. Similarly, the environmental impact (e.g., emissions to air or water) of the actual processing of the secondary material would be expected to be the same as from the processing of the analogous raw material.

⁴ It should be noted that IBM has conducted an inventory of the hazardous constituents used in its production processes and found that cadmium is not used. IBM’s explanation for the presence of cadmium in the wastewater treatment sludge is that the cadmium may be a contaminant in the lime (i.e., calcium hydroxide) used in its wastewater treatment process. Similarly, beryllium may be found in the sludge at measurable levels, even though beryllium is not used in the manufacturing process and is likewise assumed to be a contaminant in the lime used to precipitate the metals from the wastewaters.

² The criteria contained in the memorandum were consolidated from preamble discussions presented in various **Federal Register** notices. Specifically, the criteria are drawn from 53 FR at 522 (January 8, 1988); 52 FR at 17013 (May 6, 1987); and 50 FR at 638 (January 4, 1985). This memorandum is included in the docket for today’s proposal.

feedstocks used by cement manufacturers, and the very low levels of hazardous metals in the sludge, the Agency agrees with IBM that the slightly higher levels are not significant but rather are consistent with the variability typically found in raw materials mined from different sites. In other words, one could expect to find analogous raw materials (e.g., from various mining sites) that contain equivalent or even higher levels of the hazardous constituents found in IBM's sludge. (The data used in comparing IBM's sludge to the analogous raw materials are contained in the Final Project Agreement, which is included in the docket for today's proposal.)

As for the fluoride content of the sludge, it should be noted that fluoride is not a regulated constituent in F006, nor is it a RCRA Appendix VIII hazardous constituent. While fluoride is normally present in cement, IBM's sludge does have notably higher concentrations of calcium fluoride than are typically found in analogous raw materials. Consequently, only a portion of the calcium needed for the production of cement can be derived from the sludge because fluoride concentrations above a certain threshold may have adverse effects on the cement product (or on concrete made using the cement product). Thus, the sludge could not function as the sole source of the calcium in the aggregate of raw materials fed to a cement kiln because the attendant fluoride concentration could exceed that specified for the product. However, the same point may be made with regard to traditional feedstocks used in the production of cement, although the unwanted constituent may be one other than fluoride.

It is a standard practice in the cement industry to combine the various raw material feedstocks that comprise the aggregate composite fed to a cement kiln so that essential components are supplied without resulting in a greater-than-desirable concentration of unwanted constituents (as determined by the product specifications being met), as well as to maximize the cost-effectiveness of the manufacturing process. To do this, a cement manufacturer would analyze individual feedstocks to determine their constituent make-up and then determine the respective proportions of the feedstocks to be used in preparation of the aggregate composite feedstream. For example, a shipment of limestone may be analyzed for its calcium content and be found to also have a high iron (also an essential constituent in cement) content. When this shipment of

limestone is used as a source of calcium to make up the feedstream, less iron from another source (e.g., from mill scale, an iron rich by-product of the steel manufacturing process) will need to be added to the feedstream. The Agency believes that, in this specific instance, the limitation on the use of the sludge as a source of calcium, due to its fluoride content, is consistent with normal manufacturing practices rather than an indication that the sludge is not a viable ingredient in the manufacture of cement. The Agency believes that, up to a certain limit, the calcium from the IBM's sludge will perform as effectively in the production of cement as traditional calcium-bearing feedstocks. The Agency notes that the proportion of traditional calcium-bearing feedstocks may similarly be limited by the levels of constituents (other than calcium) that they contain.

Another consideration in the legitimacy determination concerns the ratio of sludge to analogous raw materials. In general, the Agency would consider a low ratio of hazardous secondary material to normal feedstocks to potentially be an indication of sham recycling. For example, a low ratio suggests that the hazardous secondary material may not truly be similar to the analogous raw materials. Moreover, it suggests that the hazardous secondary material is merely being diluted and disposed of by incorporation into a product. A low ratio of hazardous secondary material to normal feedstocks might also imply that the hazardous secondary material contributes so little as to be otherwise unnecessary to the production of the product (see 50 FR at 638, January 4, 1985). In the case of this XL project, however, it is important to note that IBM currently only generates approximately 300 tons/year of the sludge that is the subject of this XL project, and a typical cement manufacturer processes more than 60,000 tons/year of raw materials. Therefore, the overall ratio of sludge to raw material feedstocks could be, at a minimum, approximately 1:200. Although the ratio of IBM's sludge to normal cement feedstocks could be as low as 1:200, in reality it is expected that the sludge will make up a higher percentage of the overall feedstream on a per batch basis because the sludge is expected to be processed soon after the cement manufacturer receives it (as opposed to being stored long enough to be evenly distributed among all batches of cement). Thus, the actual ratio will primarily depend on the frequency of the shipments of sludge from IBM to the cement manufacturer, but it may be

relatively small. Also, as discussed further in section III. B. 3., it should be noted that it is likely that the sludge generated by the B/386 East Complex wastewater treatment plant will also be included in this XL pilot project in the future, assuming the sludge achieves the same low levels of hazardous constituents and is the subject of another Final Project Agreement (FPA) or addendum to the current FPA. The estimated volumes of this B/386 East Complex sludge is projected to be 3,900 tons per year. An additional 2,400 tons of non-hazardous wastewater treatment sludge (also generated in the East Complex wastewater treatment plant, but in a system segregated from the treatment of the electroplating wastewaters) may be recycled as an ingredient in cement. While this sludge is non-hazardous and therefore does not require any Federal regulatory flexibility to be recycled as an ingredient in cement, it should be noted that when combined with the total volumes of sludges that may, in the future, be recycled as an ingredient in cement, the total approaches 6,600 tons per year, much more consistent with the volumes of raw material feedstocks normally used to produce cement.

Taking into consideration all the criteria, as discussed above, EPA and NYSDEC have determined that the use of IBM's sludge as an ingredient in cement is legitimate recycling in the context of this XL project. It should particularly be noted that the Agency has made this determination of "legitimate recycling" only in the context of this XL project. The intent of this pilot project is to test an alternative approach from the current regulatory framework, and by its very nature, assures some level of project oversight by the EPA Region 2 office and NYSDEC (as discussed above, this was considered as an "other relevant factor"). Accordingly, the analysis done by EPA, as summarized above, which resulted in a legitimacy determination was a necessary element of this XL project. Normally, however, a determination of legitimate recycling (as the basis for an exclusion from the definition of solid waste) is a self-implementing determination (i.e., the exclusion requires no prior approval from EPA). Nevertheless, written concurrence from the appropriate regulatory agency that a given recycling activity is legitimate is strongly encouraged because persons claiming an exclusion from the definition of solid waste must be able to support their claim in the event of an enforcement action (see 40 CFR 261.2(f)).

3. Site-Specific Considerations at the IBM East Fishkill Facility

The IBM East Fishkill facility in Hopewell Junction, NY conducts semiconductor research and development operations, as well as the manufacture of semiconductor and electronic computing equipment. As a result of these process operations, which include electroplating operations, wastewaters containing dissolved heavy metal and fluoride compounds are generated and subsequently treated in two separate on-site fluoride/heavy metal (F/HM) wastewater treatment facilities, an East Complex (B/386) and a West Complex (B/690). The sludge generated from electroplating wastewaters by both wastewater treatment facilities is designated as F006 Hazardous Waste. The sludge generated by the wastewater treatment facility that serves the West Complex of the facility, identified by IBM as the Building 690 (B/690) F/HM Wastewater Treatment Facility, is the focus of this XL project. In addition to the F006 generated, the East Complex (B/386) generates a non-hazardous wastewater treatment sludge in a segregated wastewater treatment system that does not process electroplating wastewaters (IBM segregated the electroplating wastewaters from other facility wastewaters to minimize the amount of hazardous waste being generated).

Of the total volume of approximately 825 tons per year of F006 waste currently generated by the IBM East Fishkill facility, approximately 300 tons per year are generated by the B/690 West Complex wastewater treatment facility and are the subject of today's proposal. IBM has determined that the sludge generated by the B/386 East Complex wastewater treatment facility is not, at this time, a viable ingredient in cement production. However, as the Final Project Agreement states, IBM will consider (should the implementation of this XL project prove successful) implementing various waste minimization measures to improve the quality of the B/386 East Complex sludge, making it a suitable ingredient in cement production as well, and initiating steps to include the B/386 East Complex sludge in this XL project.

Since the signing of the FPA and during the development of this proposal, IBM's projections for production demand for the next few years has grown significantly. As part of planning for scaling up their production capability, IBM is considering several options to address the increased wastewater treatment capacity needed to accommodate the projected increase

in wastewater resulting from an increase in production. One of these options is to implement waste minimization technologies to remove hazardous constituents (e.g., lead) from the B/386 East Complex electroplating wastewater stream prior to precipitating the sludge and subsequently including the B/386 East Complex sludge in this XL pilot project. While the volume of electroplating sludge generated in the B/386 East Complex wastewater treatment plant is currently approximately 525 tons per year, due to the expected increase in production and corresponding increase in sludge generation the volume is estimated to increase to 3,900 tons per year. An additional estimated 2,400 tons of non-hazardous sludge generated in the B/386 East Complex wastewater treatment plant may also be included; however, the Agency notes that because this sludge is non-hazardous, no Federal regulatory flexibility is required to recycle the sludge as an ingredient in cement. Taken all together, the IBM facility could ship approximately 6,600 tons per year of sludge to be used as an ingredient in cement (300 tons/year of sludge currently included in the pilot project, plus 3,900 tons/year of sludge that may become included in this pilot project, plus 2,400 tons/year of non-hazardous sludge) once production has increased. While today's proposal is focused primarily on the 300 tons/year of B/690 West Complex sludge that is currently the subject of the FPA, the Agency is also soliciting comment on the possible future inclusion of the 3,900 tons of B/386 East Complex sludge in this XL pilot project and the exclusion from the definition of solid waste that is being proposed to implement this project. In considering comments, the reader should assume that the threshold levels for hazardous constituents in the sludge and other conditions of the exclusion being proposed for the B/690 West Complex sludge will remain the same for the B/386 East Complex sludge, the only difference being the increase in the volume of sludge being recycled. Should the B/386 East Complex sludge become comparable to the B/690 West Complex sludge, and IBM seeks to include the B/386 East Complex sludge in this XL pilot project, IBM will undertake steps to initiate a new Final Project Agreement or an addendum to the existing FPA, which will undergo the same process of stakeholder outreach and solicitation of comment on the Draft FPA (or addendum) as was done for the existing FPA. Upon signature of the FPA (or addendum) by

representatives of EPA, NYSDEC, and IBM that would include the B/386 East Complex sludge in this XL pilot project, the B/386 East Complex sludge may be recycled pursuant to the exclusion being proposed today, assuming the conditions are met.

Also, it should be noted that IBM has recycled both the B/386 East Complex and B/690 West Complex sludges as an ingredient in cement in the past. In 1987, IBM East Fishkill petitioned NYSDEC and EPA Region 2 to allow the recycling of the B/690 West Complex sludge as an ingredient in cement outside of RCRA regulatory controls. Both NYSDEC and EPA agreed that the sludge could be used as a legitimate ingredient in cement and concurred that the sludge would be excluded from the definition of solid waste and therefore, RCRA regulations would not be applicable. In 1988, IBM contracted with a cement manufacturer (which has since been sold and is now operated under new management as a different company) to use the sludge as an ingredient in cement. This recycling practice continued until 1991. In 1991, the original regulatory interpretation granting an exclusion for the sludge was re-evaluated and it was subsequently determined that because cement is a product presumed to be applied to the land, the sludge was not excluded from the definition of solid waste. At that time (and despite the apparent success of the recycling program), IBM decided to end the sludge recycling program. This prior experience demonstrated the technical and economic viability of using IBM's wastewater treatment sludge as an ingredient in cement and was considered by EPA as a "relevant factor" in determining the legitimacy of the recycling scenario.

C. What Solution Is Proposed by the IBM East Fishkill XL Project?

To overcome the disincentive posed by RCRA regulatory requirements to the recycling of its sludge, IBM has proposed to specifically exclude the B/690 West Complex sludge from the definition of solid waste and thus, from RCRA regulatory jurisdiction. In effect, the sludge would be excluded as an ingredient in an industrial process to make a product (40 CFR 261.2(e)(1)(i)) without application of the limitation on this exclusion for materials used to produce products used in a manner constituting disposal (40 CFR 261.2(e)(2)(i)). Based on their previous experience with this recycling scenario (as discussed above in Section III. B. 3.), IBM believes the recycling of the B/690 West Complex sludge as an ingredient in cement is protective of human health

and the environment and benefits the environment through conservation of finite natural resources, as well as the conservation of hazardous waste landfill space for hazardous wastes that are not amenable to environmentally sound recycling. Further, IBM believes RCRA regulatory controls provide no additional environmental protection, but rather serve as such a disincentive to recycling that sludge which could otherwise be beneficially used to manufacture a product is instead disposed of in a landfill. Rather than seek a delisting pursuant to 40 CFR 260.22 (for which the Agency would, in general, evaluate whether the sludge should be designated a hazardous waste and if not, remove the specific wastestream from the scope of the hazardous waste listing description through a rulemaking), IBM believed the best approach would be to "test" the need for RCRA jurisdiction over this sludge when it is recycled into cement. Therefore, IBM has opted to work with the Agency, NYSDEC, and interested stakeholders to develop and implement a pilot project under Project XL that will assess whether the B/690 West Complex sludge can be used as an ingredient to produce cement in an environmentally sound manner without RCRA Subtitle C regulatory controls and to develop information that will contribute to possible future regulatory actions by the Agency regarding the management of F006 wastes.

D. What Regulatory Changes Will Be Necessary To Implement This Project?

To implement this XL project, the Agency is proposing in today's notice to provide a site-specific exclusion in 40 CFR 261.4(a) (i.e., "Materials which are not solid wastes.") for the wastewater treatment sludge generated at the IBM East Fishkill facility when used as an ingredient in the production of cement. This site-specific exclusion will include conditions which reflect the intent to "test" whether this recycling scenario can be realized in an environmentally sound manner and to gather a portion of the data needed to make an informed determination concerning the possible adoption of the regulatory flexibility on a national level.

E. Why Is EPA Supporting This Approach To Removing the Electroplating Sludge From the Definition of Solid Waste?

The Agency agrees with IBM that this XL project has merit and has the potential to yield greater environmental benefits should this exclusion be adopted on a national basis. Project XL offers the opportunity for the Agency to

test its belief that this recycling scenario can be protective of human health and the environment outside of RCRA regulatory control. Further, this is the type of pilot project for which Project XL was conceived, to provide the opportunity to explore alternative regulatory approaches that differ from the current regulatory framework.

EPA notes that F006 is a very large volume hazardous wastestream nationwide. (In an October 7, 1998 study prepared by EPA's Office of Solid Waste and Emergency Response (OSWER), the amount of F006 generated in the US per year was estimated to range from 360,000 to 500,000 tons of dry weight equivalent.) A large portion of this wastestream is undoubtedly more amenable to other forms of recycling (e.g., recovery of metal values) than for use as an ingredient in cement, and some portion may prove to be inappropriate for any current recycling technology; however, the Agency believes that even if a small portion of this total volume of sludge (as well as other similar wastestreams) proves to be sufficiently similar to IBM's B/690 West Complex sludge to legitimately be recycled in this manner, environmental benefits could result. Although this XL project will provide data regarding the effectiveness and safety of using IBM's wastewater treatment sludge as an ingredient in the manufacture of cement, EPA anticipates that additional data on other F006 sludges would need to be collected prior to developing a national rulemaking for this particular recycling scenario.

The Agency also notes that the drafting of the regulatory text warrants particular attention by commenters on this proposal. As discussed earlier, the intent of this regulatory modification is to allow for the signed FPA to be implemented (after the State also makes the necessary changes to its hazardous waste program to likewise allow for this pilot project to be implemented). However, the regulatory text being proposed would apply more broadly than the project described by the current FPA. Specifically, the conditional exclusion being proposed is not limited to the sludge generated in the B/690 West Complex, but rather applies generically to wastewater treatment sludge generated at the IBM East Fishkill facility. This is being done in anticipation of the inclusion of the sludge generated in the B/386 East Complex as part of this pilot project, after the signing of a new FPA or addendum to the existing FPA. Normally, the Agency would wait until the new FPA (or addendum) has been developed and signed before

undertaking a regulatory modification to include the additional wastes subject to the new FPA (or addendum). However, because the exclusion being proposed today includes conditions that address the concentration levels of hazardous constituents in the sludge, as well as protective management practices and data gathering and reporting requirements, that are designed to ensure that the sludge will not pose an increase in risk to human health and the environment during this pilot project, the Agency believes it makes sense to propose the regulatory modification more broadly to allow for the inclusion of the B/386 East Complex sludge immediately upon signature of the new FPA (or addendum). EPA believes that the only potential concern that may arise by the inclusion of the B/386 East Complex sludge would be the additional volumes of the B/386 East Complex sludge (which are estimated to be an additional 3,900 tons/year). Therefore, the Agency is specifically soliciting comment on the potential inclusion of the additional volume of sludge in this pilot project, as well as on whether it is appropriate to propose to modify the regulations to accommodate a potential future addendum to the existing FPA (or a new FPA) that would bring additional volumes of sludges within the scope of the exclusion.

F. How Have Various Stakeholders Been Involved in This Project?

IBM understands that stakeholder involvement is an integral part of the XL process and has encouraged interested stakeholders to pursue an active role in the development of this XL project. In addition to contacting a broad base of potential stakeholders in the local community, IBM has and commits to continue to conduct outreach to a regional and national cross-section of potentially interested parties. IBM has also undertaken several initiatives in an effort to solicit interest in the XL project from a targeted audience of environmental groups. For example, on April 26, 2000, IBM gave a presentation on this XL project followed by a question and answer session to the Dutchess County Environmental Management Council (EMC), which is comprised of 21 representatives who advise their local governments and citizens on environmental issues. Similarly, IBM made a presentation on the XL project to the Town of East Fishkill Conservation Advisory Council (CAC). Following the one-hour presentation and discussion session, there was a general consensus among the CAC members that the project should be supported. Finally, IBM

retained the services of the Atlantic States Legal Foundation, Inc. (an environmental advocacy group) to assist with the involvement of stakeholders by facilitating notification of public meetings and coordinating the input of interested stakeholders in the development of the Final Project Agreement.

EPA notes that should IBM seek to include the additional volume of sludge generated at the East Complex wastewater treatment plant (i.e., B/386 East Complex sludge) in this pilot project, the same efforts to seek stakeholder involvement will be an integral part of the development of the new FPA (or addendum to the current FPA) that will allow for the additional sludge to be included in the pilot project.

G. How Will This Project Result in Cost Savings and Paperwork Reduction?

The IBM East Fishkill facility will continue to be regulated as a Large Quantity Generator due to the volume of hazardous wastes (not subject to this XL project) generated at other parts of the facility. Therefore, IBM will continue to have similar paperwork requirements. Additionally, given the nature of a pilot project, IBM will be required to report additional information as a means of evaluating this pilot project and to assist the Agency by providing some of the information necessary to evaluate whether similar regulatory flexibility should be transferred to the national program. This XL project initially addresses only a relatively small volume of wastewater treatment sludge (approximately 300 tons/year). Therefore, the immediate cost savings to the IBM East Fishkill facility resulting from this XL project are not expected to be great, though some savings will be realized. The 300 tons/year of wastewater treatment sludge that EPA is today proposing to exclude from the definition of solid waste currently costs the IBM East Fishkill facility approximately \$27,000 to dispose of in a permitted hazardous waste landfill in Canada. This amount will be saved as a result of finalizing today's proposed exclusion (although IBM expects to pay some amount to the cement manufacturer for recycling the sludge as an ingredient in cement). An additional \$8,000 (approximately) will be saved from the New York State waste management fees charged for hazardous wastes disposed in a landfill (\$27/ton/year of waste). Because IBM expects to pay for the transportation of the sludge to the cement manufacturing facility, there are no notable savings in transportation costs. The IBM East

Fishkill facility expects to save a total of \$35,000 per year as a result of this proposed XL project. The Agency notes, however, that should the projections for increased production and consequent sludge generation prove accurate, and the expected addition of the B/386 East Complex sludge in this pilot project occur, the total volume of sludge that would otherwise be subject to hazardous waste management costs could be approximately 4,200 tons per year, with potential savings (including both disposal fees and New York State waste management fees) of \$500,000 per year.

EPA, as well as NYSDEC, will benefit from some paperwork reduction and cost savings by not having to process and track additional manifests and export documents that will otherwise have to be processed without this XL project. Again, however, these cost savings and paperwork reductions will be limited because of the other hazardous wastes generated at the facility.

This project has the potential to result in significant cost savings and paperwork reduction if this pilot project proves successful and the regulatory flexibility is promulgated on a national basis. On a national level, the overall cost and paperwork reductions that could be realized may be more significant, assuming wastewater treatment sludges generated by other facilities are amenable to this type of recycling. The Agency would need to collect additional data on a wider cross-section of F006 sludges prior to developing a national rulemaking for this type of recycling scenario.

H. What Are the Terms of the IBM East Fishkill XL Project and How Will They Be Enforced?

As stated earlier, to allow for the implementation of the XL pilot project, EPA is today proposing to modify the current regulatory framework in 40 CFR 261.4(a) to provide a site-specific exclusion from the regulatory definition of solid waste (and thus, RCRA regulatory jurisdiction) for IBM's B/690 West Complex wastewater treatment sludge that is used as an ingredient in the production of cement. NYSDEC likewise intends to modify its State hazardous waste program to allow for the same site-specific exclusion from regulatory controls.⁵ The Agency

intends that the exclusion, once finalized, will apply to all the wastewater treatment sludge resulting from the B/690 West Complex wastewater treatment facility that will be used as ingredients in the production of cement, including those sludges that are in the process of being generated, sludges that result from wastewaters already in the wastewater treatment system, and sludges that have been removed from the wastewater treatment system and are being stored pending off-site transportation.

Through the development of the Final Project Agreement (FPA), IBM has agreed to comply with several key criteria as conditions for this exclusion, which will be included in the regulatory language. These conditions are focused on ensuring continued protection of human health and the environment, documenting the environmental benefits resulting from the removal of RCRA Subtitle C regulatory control over the recycling of the B/690 West Complex wastewater treatment sludge as an ingredient in cement, and gathering the data and other information that may assist the Agency in making a determination regarding the possible transfer of this site-specific exclusion to the national program in the future. Such data may be useful in supporting future EPA regulatory initiatives regarding the recycling of F006 wastestreams to make cement products, however, the Agency would need to collect additional information on a broader cross-section of F006 prior to developing a national rulemaking for this particular recycling scenario.

As conditions of the site-specific exclusion, IBM must comply with the following:

(1) Analysis (using the methods specified in 40 CFR Part 264, Appendix IX) of the constituent concentrations in the B/690 West Complex wastewater treatment sludge to ensure that the sludge being recycled remains consistent with the sludge evaluated in

NYSDEC's solid waste regulations. Once NYSDEC's project-specific rulemaking is final, the sludge will conditionally cease to be a solid or hazardous waste for the purposes of NYSDEC's hazardous waste program. However, the sludge would then become subject to regulation as a solid waste under NYSDEC's solid waste program (6NYCRR Part 360) unless a Beneficial Use Determination (BUD) has been issued. If a BUD is issued by NYSDEC, the sludge would be excluded from being a solid waste under NYSDEC's solid waste program upon arrival at the recycling facility, such that the recycling facility (i.e., the cement manufacturer) will not require a NYSDEC permit as a solid waste management facility. Prior to arrival, the sludge would be subject to regulation as a solid waste under 6NYCRR Part 360. NYSDEC expects to issue a BUD when the exclusion from the State hazardous waste regulations becomes effective.

⁵ Implementation of this XL pilot project may be expedited through the issuance of an Enforcement Directive by NYSDEC while the project-specific State rulemaking is in process. Under NYSDEC's program, as long as the sludge remains a regulated hazardous waste under NYSDEC's hazardous waste regulations, it is exempt from regulation under

developing this XL project and that it meets the threshold levels discussed below. IBM must perform this analysis every three months for an initial 12-month period. (Note that some or all of these data may be derived from the time period immediately preceding the effective date of this rule.) Following the initial 12-month period (i.e., four sampling/analysis events), IBM must analyze the sludge every six months for the duration of the XL project. These analytical data (including both the 3-month and 6-month sampling/analysis events) must be submitted to the Region 2 office and NYSDEC every six months. Additionally, after any change in the manufacturing process or wastewater treatment process that could affect the chemical composition of the wastewater treatment sludge, sampling and analysis must be conducted.

(2) Management standards for the sludge to ensure that the sludge is actually recycled rather than inadvertently released to the environment, and to ensure that the sludge is managed as a commodity.

(3) Tracking of the sludge, to ensure that the sludge reaches the cement manufacturing facility. In general, under the current hazardous waste regulations (see 40 CFR Parts 262, Subpart D and 263, Subpart B), wastes are tracked through the use of a hazardous waste manifest which accompanies the waste shipment.⁶ The regulatory requirements are designed to ensure that the waste is actually received by the facility intended to receive the waste, with built-in time limits requiring a generator to proactively address a shipment that has not been received in a timely fashion. However, because this pilot project provides an exclusion from the definition of solid waste (and therefore from being a hazardous waste), the manifest requirements do not apply. Nevertheless, the Agency believes the need to track the wastewater treatment sludge still remains, to ensure that a shipment of sludge actually reaches its intended destination. However, the Agency does not believe that in this case

⁶ Upon receipt of the waste shipment, the receiving facility must sign and return a portion of the manifest to the generator as acknowledgment of receipt of the waste. In the event that the generator does not receive notification that the waste has been received within 35 days, the generator must contact the transporter and/or the facility designated to receive the waste in an effort to ascertain the status of the waste shipment. If the generator does not receive acknowledgment that the waste has been received by the designated facility within 45 days of the date the shipment was received by the transporter, the generator must submit an Exception Report (see 40 CFR 262.42) to the appropriate EPA Regional office describing the efforts undertaken to locate the waste shipment and the results of these efforts.

a hazardous waste manifest, or a similar document, is the only means to ensure that the sludge is being shipped and received appropriately. Therefore, the Agency is allowing IBM the flexibility to develop a tracking system that, in effect, provides the same assurances that the hazardous waste manifest would provide. Specifically, this tracking system must include the following information: the date of shipment, volume of sludge being transported, where the sludge is being shipped, and the date that the shipment was received. IBM remains responsible for ensuring that the sludge is actually received and processed by the cement manufacturer.

(4) Additional data collection and reporting on the volumes of sludge recycled as part of this XL project, and an accounting of the volume of analogous raw materials conserved, or alternatively, the increased volume in cement produced as a result of using the sludge as an ingredient.

The threshold levels for the hazardous constituents in the sludge (one of the conditions of the exclusion) are derived based on six recent samples of the wastewater treatment sludge taken between February 1999 and June 2000. Given the analytical results, a standard statistical method⁷ was used to derive the actual threshold levels, using a 95% confidence level. These levels are not intended to be health-based levels. The

⁷ The standard statistical method establishes a confidence interval that encompasses a certain percentage of the area beneath the bell curve for a normally distributed set of data. The confidence interval has an upper limit and a lower limit. This test was initially designed to determine if individual data points fall within a pre-established confidence interval. Data falling outside the interval are determined to be statistically invalid and are discarded. The test has also been adapted for use in establishing reasonable limits within which future data can reasonably be expected to fall.

For the purposes of establishing an exceedance threshold, only the upper limit is used; the lower limit is not used. The upper limit is calculated as follows: (upper limit of confidence interval) = mean + t* (standard deviation).

A standard statistical table was used to determine the value of 't' for each set of results based on the degrees of freedom ($n - 1$, where n is the number of results) and an upper limit of 0.05 (95%). As several of the samples had constituents that were not detected, a method had to be employed to handle these cases. Discarding non-detected results would skew the calculated thresholds high and also increase the degree of error. A method that is typically used (and is used here) is to assume that the actual concentration of a constituent that was not detected falls somewhere between zero and the method detection limit. On average, these values are expected to equal one-half the method detection limit. Therefore, for all non-detect values, one-half the method detection limit is substituted in the calculation of the mean and the standard deviation.

The threshold level for amenable cyanides was derived by substituting the threshold level for total cyanides, which the Agency believes will adequately address any concerns regarding the possible presence of cyanides in the sludge.

threshold levels are intended to serve as a means to gauge the performance of the wastewater treatment process and the composition of the sludge, given that EPA's willingness to implement this pilot project was based in part on the very low levels of hazardous constituents in the sludge and given that this pilot project is premised on the sludge being comparable to the raw ingredients used to produce cement.

In addition to analyzing the sludge to ensure that the threshold levels for the hazardous constituents are met, EPA is requiring IBM to analyze for two additional hazardous constituents, specifically mercury and beryllium, which are not necessarily expected to be in the wastewater treatment sludge. While mercury is not used in the production process, it is used in the laboratory and could conceivably end up in the wastewater treatment sludge (although the Agency acknowledges that in all of the analyses of the sludge, mercury was not detected). Beryllium is also not used in the production process, nor anywhere else at the facility. However, as discussed earlier, it has been found in the sludge in measurable concentrations, presumably resulting as a contaminant in the lime used in the wastewater treatment process. IBM has agreed to analyze and provide data on both mercury and beryllium⁸ to the Agency to increase the available information on the sludge. Additionally, IBM has agreed that, should mercury or beryllium be found at significant levels in the sludge, the Agency may set appropriate threshold levels for these constituents as well, through a rulemaking to amend the site-specific exclusion from the definition of solid waste.

The purpose of the periodic analysis is to serve as a check on the performance of the wastewater treatment process itself, as well as to ensure that the sludge is consistently within the threshold concentration levels for the hazardous constituents in the sludge. However, in the unlikely event that the quarterly, or semi-annual, analysis of the wastewater treatment sludge indicates that a specific batch of sludge exceeds one or more constituent thresholds, the pilot project will be temporarily suspended until subsequent

⁸ The Agency notes that cadmium is also not used at the facility and so would not be expected to be in the wastewater treatment sludge. As in the case for beryllium, when cadmium is present in the sludge, it is presumably due to its presence in the lime used in the wastewater treatment process. Although the Agency is not setting a threshold limit for beryllium, it is setting a threshold level for cadmium (with agreement from IBM) because cadmium is one of the constituents for which F006 was specifically listed.

analysis (which can be performed immediately) of the sludge demonstrates that the thresholds are once again being met (i.e., the exclusion would not be applicable because the conditions were not met, and will continue to be non-applicable until IBM demonstrates that the conditions are again being met). The Agency acknowledges that the results of the analysis may not be known until after the sludge has already been received and processed by the cement manufacturer as an ingredient in cement (due to the materials handling logistics at the facility, IBM is unable to store the sludge on-site until the results of the analysis are known). Because the threshold levels are so low and because the sludge has demonstrated a relatively consistent composition, the Agency does not believe any action will be necessary to address the sludge that has already been received and processed into cement (in effect, that cement will have been "grandfathered" by the conditional exclusion). The Agency will, however, evaluate such failures to meet the threshold levels as part of its evaluation of the success of this pilot project.

I. How Long Will This Project Last and When Will It Be Completed?

This project will be in effect for five years from the date that the final rulemaking becomes effective unless it is terminated earlier or extended by all Project Signatories (if the FPA is extended, the comments and input of stakeholders will be sought and a **Federal Register** notice will be published). Any Project Signatory may terminate its participation in this project at any time in accordance with the procedures set forth in the FPA. The project will be completed at the conclusion of the five-year anniversary of the final rulemaking or at a time earlier or later determined by the amount of information gathered to date and the interest of the parties involved. The proposed site-specific exclusion that enables the implementation of this XL project contains a "sunset provision" that will effectively terminate the exclusion automatically after five years, unless further regulatory action is taken to extend the XL project (or end it sooner).

Prior to, or at the completion of the project term, EPA and NYSDEC commit to evaluating the project. If the project results indicate that it was a success, EPA will consider making the site-specific exclusion permanent (through normal rulemaking procedures). EPA will also consider transferring the regulatory flexibility (or similar flexibility) to the national RCRA

program (through normal rulemaking procedures), but such a national change would require more information than the Agency expects to gather from this XL project. Should on-going evaluation during the course of the XL project indicate that the project is not successful, EPA will promulgate a rule to remove the site-specific exclusion prior to the five-year sunset provision. However, as for any conditional exclusion, if at any time, should IBM or the cement manufacturer fail to meet all of the conditions of the site-specific exclusion, the exclusion is not applicable. Also, the Agency may promulgate a rule to withdraw the exclusion at any time, subject to the procedures agreed to in the Final Project Agreement (FPA), including, but not limited to, a substantial failure on the part of any Project Signatory to comply with the terms and conditions of the FPA or if the exclusion becomes inconsistent with future statutory or regulatory requirements.

IV. Additional Information

A. How To Request a Public Hearing

A public hearing will be held, if requested, to provide an opportunity for interested persons to make oral presentations regarding this regulation in accordance with 40 CFR Part 25. Persons wishing to make an oral presentation on the site-specific rule to implement the IBM East Fishkill XL project should contact Mr. Sam Kerns or Ms. Aleksandra Dobkowski-Joy of the EPA Region 2 office, at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before the hearing, or after the hearing, to be received by EPA no later than July 6, 2001. Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. How Does This Rule Comply With Executive Order 12866: Regulatory Planning and Review?

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site-specific rules under Project XL is not necessary.

C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because it only affects the IBM facility in Hopewell Junction, NY and it is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act?

This action applies only to one facility, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the

Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to one facility in New York. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA & Hazardous and Solid Waste Amendments of 1984

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program for hazardous waste within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the Federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA.

After authorization, Federal rules written under RCRA (non-HSWA), no longer apply in the authorized state except for those issued pursuant to the Hazardous and Solid Waste Act Amendments of 1984 (HSWA). New Federal requirements imposed by those rules do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in nonauthorized States. EPA is directed to carry out HSWA requirements and prohibitions in

authorized States until the State is granted authorization to do so.

2. Effect on New York Authorization

Today's proposed rule, if finalized, will be promulgated pursuant to non-HSWA authority, rather than HSWA. New York has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the Federal program. New York has received authority to administer the regulations that define solid wastes. As a result, if today's proposed rule to modify the existing regulations to provide a site-specific exclusion for IBM's wastewater treatment sludge is finalized, it would not be effective in New York until the State adopts the modification. It is EPA's understanding that subsequent to the promulgation of the final rule, New York intends to propose rules or other legal mechanisms to provide the exclusion. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

G. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

The Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

H. How Does This Rule Comply With Executive Order 13132: Federalism?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial and 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."

The proposed rule does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of powers and responsibilities among various levels of government, as specified in Executive Order 13132. The proposed rulemaking will only affect one facility, providing regulatory flexibility applicable to this specific site. Thus, Executive Order 13132 does not apply to this proposed rule.

I. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Governments?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. EPA is currently unaware of any Indian tribes located in the vicinity of the facility. Thus, Executive Order 13175 does not apply to this rule.

J. Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: May 30, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set forth in the preamble, part 261 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraph (a)(22) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(22) Dewatered wastewater treatment sludges generated by the International Business Machines Corporation (IBM) East Fishkill facility in Hopewell Junction, New York, provided that:

(i) The sludge is recycled as an ingredient in the manufacture of cement meeting appropriate product specifications by a cement manufacturing facility.

(ii) The sludge is not stored on the land, and protective measures are taken to ensure against wind dispersal and precipitation run-off.

(iii) The sludge is not accumulated speculatively, as defined in § 261.1(c)(8).

(iv) A representative sample of the sludge undergoes constituent analysis by IBM (using the methods specified in 40 CFR Part 264, Appendix IX) demonstrating that the sludge contains constituents at no greater concentrations than the thresholds presented below. Sludges generated by different wastewater treatment systems must be analyzed separately (commingling of the sludges is permissible after sampling). This sampling and analysis must be conducted every three months for an initial 12-month period, which can include the immediate period prior to the effective date of this exclusion. After the initial 12-month reporting period (i.e., four sampling/analysis events), sampling and analysis must be conducted every six months for the duration of the project. Additionally, after any change in either the manufacturing process or the wastewater treatment process that could affect the chemical composition of the wastewater treatment sludge, sampling and analysis must be conducted. In addition to the constituents for which threshold levels are established, IBM must analyze and report the concentration levels of mercury and beryllium:

Arsenic—3.0 mg/kg
Cadmium—0.88 mg/kg
Chromium—(total) 22.9 mg/kg
Lead—18.8 mg/kg
Nickel—10.4 mg/kg
Silver—2.1 mg/kg
Cyanide (amenable)—0.815 mg/kg
Cyanide (total)—0.815 mg/kg

(v) An accounting is made of the volumes of sludge that are recycled, with an assessment of how much less analogous raw materials are used to produce the same volume of cement product, or how much more cement is produced attributable to the volume of sludge that is processed. IBM must acquire this information from the cement manufacturing facility.

(vi) IBM documents each shipment of the sludge, including where the sludge was sent, the date of the shipment, the date that the shipment was received and the volume of each shipment.

(vii) IBM provides EPA and NYSDEC with semi-annual reports detailing all of the information in paragraphs (a)(22)(i) through (vi) of this section for the duration of the project.

(viii) Should any of the conditions of paragraphs (a)(22)(i) through (vii) of this section not be met, the exclusion provided in this provision will not be applicable and the wastewater treatment sludge will be subject to the applicable RCRA Subtitle C regulations until the conditions are once again met.

(ix) The provisions of this section shall expire on [INSERT DATE FIVE YEARS FROM EFFECTIVE DATE OF FINAL RULE].

* * * * *

[FR Doc. 01–14249 Filed 6–5–01; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket 01–96; FCC 01–134]

Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC) proposes to decide the means for sharing among multiple satellite network licensees in spectrum recently designated for the non-geostationary satellite orbit, fixed-satellite service (NGSO FSS) in the 17.7–20.2 GHz and 27.5–31.3 GHz frequency bands (the Ku-band). The FCC's Notice of Proposed Rulemaking (NPRM) seeks comment on four possible sharing options, and also seeks comment on proposed blanket earth station licensing for NGSO FSS in the Ku-band, and seeks comment on proposed service rules. The Commission's goals in opening this satellite service in the Ku-band are to promote competition through opportunities for new entrants, to expedite the authorization process, and to provide incentives for prompt commencement of service to the public using state-of-the-art technology.

DATES: Comments may be filed on or before July 6, 2001. Reply comments may be filed on or before August 6, 2001. Comments on the proposed information collections may be filed on or before August 6, 2001.

ADDRESSES: Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper copies. See **SUPPLEMENTARY INFORMATION** for filing instructions, formats and other information regarding electronic filing; send paper copies to Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Comments regarding the request for approval of the information collection should be submitted to Judy Boley at 445 12th Street, SW., Rm. 1–C804, Washington, DC 20554 or via

internet at jboley@fcc.gov; phone 202-418-0214.

FOR FURTHER INFORMATION CONTACT: For more information regarding the Notice of Proposed Rulemaking contact: J. Mark Young at (202) 418-0762, internet: myoung@fcc.gov, International Bureau, Federal Communications Commission, Washington, DC 20554. For more information regarding the information collections and to submit comments, contact Judy Boley at 202-418-0214; 445 12th Street SW., Rm. 1-C804, Washington, DC 20554 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in IB Docket No. 01-96; FCC 00-134, adopted April 19, 2001 and released on May 3, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Summary of Notice of Proposed Rulemaking

The NPRM describes the technical criteria for the NGSO FSS, and the radiofrequency spectrum allocated by the FCC late last year to the NGSO FSS in ET Docket No. 98-206, 66 FR 10601 (February 16, 2001). The NPRM proposes four spectrum sharing options. The first is "flexible band segmentation," which would divide the available spectrum into equal blocks to be assigned to particular licensees. The second option is "dynamic band segmentation," under which the available spectrum is divided equally by the number of satellite systems transmitting and receiving signals in their intended orbit. The third sharing option, "avoidance of in-line interference events," allows all systems to operate in the entire available spectrum, so long as they avoid interfering with each others' systems, by means of calculating those occasions when their satellites and earth stations are aligned so as to create interference. Under the fourth sharing option, "homogeneous constellations," the FCC would adopt one or more unifying constellation designs to accommodate all licensees. The NPRM also asks commenters to suggest variations or alternatives to the four options proposed.

In addition, the NPRM proposes to allow blanket licensing of NGSO FSS earth stations, but only in specified

frequency bands. The NPRM also requires NGSO FSS applicants to demonstrate compliance with power limitations adopted by the Commission when it allocated spectrum to the NGSO FSS in December 2000.

Finally, the NPRM reviews and seeks comment on each proposed service rule for the NGSO FSS in the Ku-band frequencies. The proposed service rules include coverage area requirements, system license and license terms, FCC regulatory classification as common carrier or non-common carrier, system implementation milestones, regulatory reporting requirements, international coordination, and a prohibition on the sale of a bare license for a profit. The NPRM also proposes to require that NGSO FSS applicants disclose their plans to mitigate orbital debris.

Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA),¹ requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."² The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴ A small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).⁵

This Notice of Proposed Rulemaking (NPRM) seeks comment on various proposals for creating a spectrum assignment approach that would accommodate all proposed non-

geostationary satellite orbit fixed satellite service (NGSO FSS) systems and provide service to consumers as quickly as possible. This NPRM also seeks comment on proposals for service rules to apply to NGSO FSS systems.⁶ These actions are necessary for the Commission to evaluate these proposals and seek comment from the public on any other alternatives. The objective of this proceeding is to assign the NGSO FSS spectrum in an efficient manner and create rules to ensure systems implement their proposals in a manner that serves the public interest. We believe that adoption of the proposed rules will reduce regulatory burdens and, with minimal disruption to existing FCC permittees and licensees, result in the continued development of NGSO FSS and other satellite services to the public. If commenters believe that the proposed rules discussed in the NPRM require additional RFA analysis, they should include a discussion of this in their comments.

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary satellite orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services "Not Elsewhere Classified." This definition provides that a small entity is one with \$11.0 million or less in annual receipts.⁷ This Census Bureau category is very broad, and commercial satellite services constitute only a subset of the total number of entities included in the category.

The rules proposed in this NPRM apply only to entities providing NGSO FSS. Small businesses will not have the financial ability to become NGSO FSS system operators because of the high implementation costs associated with satellite systems and services. Since there is limited spectrum and orbital resources available for assignment, we estimate that only seven applicant entities, whose applications are pending, will be authorized by the Commission to provide these services.⁸ None of the seven applicants is a small business because each has revenues in excess of \$11 million annually or has parent companies or investors that have revenues in excess of \$11 million annually.

We therefore certify that the rules proposed in this NPRM will not apply to any small entities. The Commission's

¹ The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² 5 U.S.C. 605(b).

³ *Id.* at § 601(6).

⁴ *Id.* at § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁵ Small Business Act, 15 U.S.C. 632.

⁶ See paragraphs 50-69, *supra*.

⁷ 13 CFR 121.201, North American Industry Classification System (NAICS) Code 51334.

⁸ See paragraph 9, *supra*.

Office of Public Affairs, Reference Operations Division, will send a copy of this NPRM, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the **Federal Register**.

Procedural Information

Ex Parte Presentation. This is a permit-but-disclose rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

Authority. This action is taken pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r).

Comment. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 18, 2001, and reply comments on or before July 19, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

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 get 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.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Room TW-A325, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be

submitted to: Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Room TW-A325, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, IB Docket No. 01-96, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

Ordering Clauses

Pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), this Notice of Proposed Rulemaking is hereby adopted.

The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

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.

OMB Approval Number: New (3060-XXXX).

Title: NGSO FSS Satellite Service.

Form No.: NA.

Type of Collection: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 107.

Estimated Time for Response: 3 hours.

Total Annual Burden: 321 hours.

Needs and Uses: The information will be used by the Federal Communications Commission (FCC) and interested members of the public to ensure compliance with the rules adopted for the NGSO FSS satellite service. Specifically, the rules require space station applicants to submit certifications of compliance with specific technical operating requirements adopted for this service. The rules require space station licensees to file annual reports indicating progress of system implementation and identifying any system failures, delays or difficulties. In addition, entities granted blanket earth station licenses are required to report the number stations brought into use each year. These rules will allow the Commission to grant licenses in compliance with the technical rules of this service and to ensure continued compliance by licensees. Without such information, the FCC could not determine whether satellite licenses are operating in conformance with its rules.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

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

Authority: 47 U.S.C. 701-744. Interprets or applies Section 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.115 is amended by adding a new paragraph (f) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * *

(f) User transceivers in the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) service in the 11.7–12.2 GHz, 12.2–12.7 GHz and 14.0–14.5 GHz bands need not be individually licensed. Service vendors may file blanket applications for transceiver units using FCC Form 312, Main Form and Schedule B, and shall specify the number of terminals to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.146.

3. Section 25.146 is amended by adding paragraphs (g) through (p) to read as follows:

§ 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

* * * *

(g) *System license.* Applicants authorized to construct and launch a system of technically identical non-geostationary satellite orbit fixed satellite service satellites will be awarded a single “blanket” license covering a specified number of space stations to operate in a specified number of orbital planes.

(h) In addition to providing the information specified in § 25.114 above, each NGSO FSS applicant shall provide the following:

(1) A demonstration that the proposed system is capable of providing fixed-satellite services on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, U.S.; and

(2) A demonstration that the proposed system be capable of providing fixed-satellite services to all locations as far north as 70 deg. latitude and as far south as 55 deg. latitude for at least 75% of every 24-hour period; and

(3) Sufficient information on the NGSO FSS system characteristics to properly model the system in computer sharing simulations, including, at a minimum, NGSO hand-over and satellite switching strategies, NGSO satellite beam patterns, NGSO satellite antenna patterns and NGSO earth station antenna patterns. In particular, each NGSO FSS applicant must explain the switching protocols it uses to avoid transmitting while passing through the geostationary satellite orbit arc, or provide an explanation as to how the power-flux density limits in § 25.208 are

met without using geostationary satellite orbit arc avoidance. In addition, each NGSO FSS applicant must provide the orbital parameters contained in Section A.3 of Annex 1 to Resolution 46.

Further, each NGSO FSS applicant must provide a sufficient technical showing to demonstrate that the proposed non-geostationary satellite orbit system meets the power-flux density limits contained in § 25.208, as applicable; and

(4) A description of the design and operational strategies that it will use, if any, to mitigate orbital debris. Each applicant must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

(i) *Considerations involving transfer or assignment applications.* (1) “Trafficking” in bare licenses issued pursuant to paragraph (g) of this section is prohibited.

(2) The Commission will review a proposed transaction to determine if the circumstances indicate trafficking in licenses whenever applications (except those involving *pro forma* assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities licensed pursuant to paragraph (g) of this section. At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that no trafficking has occurred.

(j) *Prohibition of certain agreements.* No license shall be granted to any applicant for a NGSO system in the fixed-satellite service operating in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands if that applicant, or any persons or companies controlling or controlled by the applicant, shall acquire or enjoy any right, for the purpose of handling traffic to or from the United States, its territories or possession, to construct or operate space segment or earth stations, or to interchange traffic, which is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons or companies controlling or controlled by the Licensee are parties.

(k) *Implementation milestone schedule.* Each NGSO FSS licensee in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands will be required to enter into a non-contingent satellite manufacturing contract for the system within one year of authorization, to complete critical design review within two years of authorization, to begin physical

construction of all satellites in the system within two and a half years of authorization, to complete construction and launch of the first two satellites within three and a half years of grant, and to launch and operate its entire authorized system within six years of authorization.

(l) *Reporting requirements.* All NGSO FSS licensees in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands shall, on June 30 of each year, file a report with the International Bureau and the Commission’s Laurel, Maryland field office containing the following information:

(1) Status of space station construction and anticipated launch date, including any major problems or delay encountered;

(2) Identification of any space station(s) not available for service or otherwise not performing to specifications, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified.

(m) *Financial requirements.* Each NGSO FSS applicant must demonstrate, on the basis of the documentation contained in its application, that it is financially qualified to meet the estimated costs of the construction and launch of all proposed space stations in its system and the estimated operating expenses for one year after the launch of the initial system. Financial qualifications must be demonstrated in the form specified in § 25.140(c) and (d). In addition, applicants relying on current assets or operating income must submit evidence that those assets are separate and apart from any funding necessary to construct or operate any other licensed satellite system. Failure to make such a showing will result in the dismissal of the application.

(n) *Replacement of space stations within the system license term.* Licensees of NGSO FSS systems in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands authorized through a blanket license pursuant to paragraph (g) of this section need not file separate applications to launch and operate technically identical replacement satellites within the term of the system authorization. However, the licensee shall certify to the Commission, at least thirty days prior to launch of such replacement(s) that:

(1) The licensee intends to launch a space station into the previously-authorized orbit that is technically identical to those authorized in its system authorization and

(2) Launch of this space station will not cause the licensee to exceed the

total number of operating space stations authorized by the Commission.

(o) *In-orbit spares.* Licensees need not file separate applications to operate technically identical in-orbit spares authorized as part of the blanket license pursuant to paragraph (g) of this section. However, the licensee shall certify to the Commission, within 10 days of bringing the in-orbit spare into operation, that operation of this space station did not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

(p) *Earth station reporting.* Licensees shall submit to the Commission a yearly report indicating the number of earth stations actually brought into service under its blanket licensing authority. The annual report is due to the Commission no later than the first day of April of each year and shall indicate the deployment figures for the preceding calendar year.

[FR Doc. 01-14141 Filed 6-5-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01-1184, MM Docket No. 00-69, RM-9850, RM-9945 and 9946]

Radio Broadcasting Services; Cheboygan, Rogers City, Bear Lake, Bellaire, Rapid River, Manistique, Ludington, Walhalla & Onaway, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, in response to the counterproposal filed by D&B and Fort Bend Broadcasting Company proposing changes at Rogers City, Bear Lake, Bellaire, Rapid River, Manistique, Ludington, Walhalla & Onaway, Michigan, issues an Order to Show Cause to the licensee of Station WKLA, Ludington, Michigan, as to why its license should not be modified to specify operation on Channel 254A in lieu of Channel 292A. The counterproposal was filed in response to the Notice of Proposed Rule Making and Order to Show Cause which proposed the allotment of Channel 260C2 at Cheboygan, Michigan, and the substitution of Channel 292C2 for Channel 260C2 at Rogers City, Michigan. See 65 FR 30588, May 12, 2000.

DATES: Comments must be filed on or before July 2, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause, MM Docket No. 00-69, adopted May 2, 2001, and released May 11, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 292A and adding Channel 254A at Ludington.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01-14020 Filed 6-5-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01-1291, MM Docket No. 01-112, RM-10115]

Radio Broadcasting Services; Waitsburg, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jeffrey A. Bruton proposing the allotment of Channel 272A at Waitsburg, Washington, as that community's first local broadcast service. The coordinates for Channel 272A at Waitsburg are 46-17-17 and 117-59-18. There is a site restriction 12.8 kilometers (7.9 miles) east of the community. Canadian concurrence will be requested for the allotment of Channel 272A at Waitsburg.

DATES: Comments must be filed on or before July 16, 2001, and reply comments on or before July 31, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jeffrey A. Bruton, 1832 Fern, Walla Walla, Washington 99362.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-112, adopted May 16, 2001, and released May 25, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Waitsburg, Channel 272A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01-14245 Filed 6-5-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-1290; MM Docket No. 01-111; RM-10020]

Radio Broadcasting Services; Alamo, Georgia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on the proposed allotment of Channel 287C3 to Alamo, Georgia, as that community's first local aural transmission service. Coordinates used for this proposal are 32-19-29 NL and 82-43-23 WL.

DATES: Comments must be filed on or before July 16, 2001, and reply comments on or Before July 31, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: The Office of Dan J. Alpert; 2120 N. 21st Road; Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-111, adopted July 16, 2001, and released July 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding

Alamo, Channel 287C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01-14244 Filed 6-5-01; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-01-9785]

Notice of Public Meeting and Request for Comments To Address the Development of a Booster Seat Education Plan

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

ACTION: Notice of Public Meeting and Request for Comments.

SUMMARY: On July 10, 2001, NHTSA will hold a public meeting to discuss the development of a 5 year strategic booster seat education plan, for implementation beginning November 2001. The intent of this meeting is to allow the sharing of viewpoints, information, and ideas on this important subject among all interested members of the public, including industry, government, and advocacy groups. Topics to be discussed include, but are not limited to, educational programs, program effectiveness and evaluation, target audiences, program delivery, challenges, and funding sources. Discussion topics will also be based on written comments received as a result of this Notice; comments submitted previously under a Request for Comments for "Child Restraint System Safety Plan," **Federal Register** Notice published November 27, 2000, Docket Number NHTSA 7938; recommendations of the Blue Ribbon Panel II ("Protecting Our Older Child Passengers," web address: http://www.actsinc.org/whatsnew_6.html); as well as recommendations from the Association for the Advancement of Automotive Medicine's (AAAM, web address: www.carcrash.org) meeting on "Booster Seats for Children: Closing the Gap Between Science and Public Policy," held in Washington, DC on April 23 and 24, 2001. The public is invited to participate in the meeting in any of four ways: by requesting to make a presentation at the meeting, by submitting written comments to be included in the public record, by submitting suggestions for topics to be included on the meeting agenda, and by attending the meeting. We anticipate that the published plan will lead to an increase in the use of booster seats by improving consumer awareness of the safety benefits of booster seat use, the importance of using booster seats, as well as enforcing the laws in those states that have upgraded their child

restraint laws to include booster seats for children 4 to 8 years old.

DATES: *Public Meeting:* NHTSA will hold a public meeting on July 10, 2001, from 10 a.m. to 12 p.m., and continuing from 1 p.m. to 3 p.m., if necessary, at the below listed address.

Written Comments: Written requests to speak at the public meeting, comments to be submitted for the public record, and suggestions for items to be included in the meeting agenda, should be received at Docket Management at the below address no later than July 13, 2001.

ADDRESSES: *Public Meeting:* The public meeting will be held in room 2230, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590.

Written Comments: Submit written comments to the DOT Docket Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW, Washington, D.C. 20590-0001. Comments should refer to the Docket Number (NHTSA-01-9785) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard.

Comments may also be submitted to the docket electronically by logging onto the DOT Docket Management System website at <http://dms.dot.gov>. Click on "Help & Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the Docket Number.

Claim of Confidentiality for Written Comments: Such claims should be submitted to Chief Counsel, NCC-01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590, and Tami Levitas, Occupant Protection Division, NTS-12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Include Docket Number and Notice title with correspondence.

FOR FURTHER INFORMATION CONTACT: Tami Levitas, at the above address, telephone (202) 366-0652, Fax (202) 366-2766, e-mail tlevitas@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION: We are all concerned with assuring the safety of our children, our most precious resources. With the cooperation of numerous partners, including the child restraint industry, automotive industry, citizen activists, non-profit organizations, and government, we have made great strides during the past few years in enhancing the safety of children riding in motor vehicles. For example,

all states now have laws requiring children to be in child restraints, and some of these laws have been upgraded to cover the use of booster seats. More and more children are riding in child restraints, and they have saved over 300 lives per year over the past five years. There has also been an increased public awareness of the need to install child restraint systems properly and to keep children in appropriate child restraint systems as long as possible.

Despite the successes, there are issues that require further attention. One such area is the use of booster seats. Restraint use decreases as children get older. While restraint use for infants is 97 percent, and for toddlers (ages 1 through 4) is 91 percent, restraint use for children ages 5 through 15 decreases to 72 percent. These are children approximately ages 4 to 8. This age group accounts for 25 percent of all fatalities among children under age 15.

The Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act, enacted in November 2000, charged the Secretary of Transportation with developing a five year strategic plan to reduce deaths and injuries caused by failure to use the appropriate booster seat in the 4 to 8 year old age group by 25 percent. TREAD requires that this plan be implemented in November 2001.

In addition to the general public, the agency invites such groups as the booster seat manufacturers, data collection/insurance groups, child advocacy groups, etc., to submit comments on this notice. All written comments shall be in English. Comments must not exceed 15 pages in length, but necessary attachments may be appended to these submissions without regard to the 15-page limit (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Amendments to comments received under Request for Comments "Child Restraint System Safety Plan" published in the November 27, 2000 **Federal Register** (Docket Number NHTSA-7938) are also welcomed.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Tami Levitas at the above address. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in

the agency's confidential business information regulation (49 CFR part 512).

Further information on booster seats can be obtained by going to the NHTSA web site at www.nhtsa.dot.gov.

On July 10, 2001, NHTSA will conduct a public meeting to provide a forum for all interested persons to discuss the issues set out above. Some of the topics to be discussed at the meeting include:

1. What type(s) of educational programing should be developed to increase booster seat use?
2. What types of educational programing will have the biggest impact on increasing booster seat use?
3. What do you see as the single greatest challenge in educating the public about booster seat use? How do we overcome this challenge?
4. Who are the primary target audiences for booster seat education? Please identify specific segments of the population.
5. What is the best method of program delivery (e.g. mass communication, classroom setting; electronic medium, etc.)?
6. With whom should NHTSA partner to develop this plan?
7. What role should private sector entities (i.e. auto manufacturers, child restraint manufacturers, retail outlets, etc.) play in this program?
8. What are potential funding sources for program activities?
9. What criterion(a) do people use when selecting a booster seat?
10. What are the different types of booster seats?
11. How do the different types of booster seats compare in terms of: features, cost, ease of use, etc.?
12. Other topics will be based on comments received from this announcement.

If you wish to make a presentation at the meeting, please contact Tami Levitas at the above mailing address or telephone number by July 2, 2001. If your presentation will include slides, motion pictures, or other visual aids, please so indicate and NHTSA will make the proper equipment available. Presenters should bring at least one copy of their presentation to the meeting so that NHTSA can readily include the material in the public record. Those speaking at the public meeting should limit the length of their presentations to 10 minutes. Due to time limitations, NHTSA may have to limit the number of presenters per organization. NHTSA will provide auxiliary aids to participants as necessary. Any person desiring "auxiliary aids" (e.g., sign-language interpreter,

telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Tami Levitas.

Since Section 14 of the TREAD Act charged NHTSA with "Improving the safety of child restraints," this is the first of several **Federal Register** notices to be published that will advise of public meetings, request for comments, and/or advise of notice of proposed rulemaking on topics such as child seat labeling, child restraint ratings system, and booster seat study.

I've Submitted Comments Before Under Similar Topics, What About Those Comments?

Amendments to comments received under Request for Comments "Child Restraint System Safety Plan" published in the November 27, 2000, Docket Number NHTSA-7938, **Federal Register** are also welcomed.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket Number of this document (NHTSA-01-9785) in your comments. Submit all written comments to the Docket Management at the above address.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC-01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL-401, 400 Seventh Street, SW., Washington, DC from 9:00 a.m. to 5:00 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

- a. Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov>).
- b. On that page, click on "search."
- c. On the next page (<http://dms.dot.gov/search/>) type in the four-digit Docket Number shown at the beginning of this document (9785). Click on "search."
- d. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Marilena Amoni,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 01-14284 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-59-P

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list *Botrychium lineare* (slender moonwort) as threatened under the Endangered Species Act of 1973, as amended (Act). After reviewing all available scientific and commercial information, we have determined that listing this species is warranted but precluded by other higher priority actions.

This decision is based on the number, variety, and significance of threats affecting the species. *Botrychium lineare* is currently known from a total of nine populations in Colorado, Montana, Oregon, and Washington. Various populations of this taxon are threatened by a variety of factors including: habitat destruction and fragmentation from road construction and maintenance, including herbicide spraying, recreational activities, grazing and trampling by wildlife and livestock, development, timber harvest, and competition from non-native plant species. Upon publication of this notice of 12-month petition finding, *Botrychium lineare* will be added to our candidate species list.

DATES: The finding announced in this document was made on March 9, 2001. Comments and information may be submitted until further notice.

ADDRESSES: You may submit data, information, comments, or questions concerning this finding to the Supervisor, U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. You may inspect the petition finding, supporting data, and comments by appointment during normal business hours at the Snake River Basin Office.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor (see **ADDRESSES** section) (telephone 208/378-5243; facsimile 208/378-5262).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species containing substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned actions is—(i) not warranted, (ii) warranted, or (iii) warranted but precluded from immediate proposal by other higher priority efforts to revise the

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Plant *Botrychium lineare* (Slender Moonwort) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

List of Threatened and Endangered Species. Section 4(b)(3)(C) requires that petitions for which requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register**.

On July 28, 1999, we received a petition dated July 26, 1999, from the Biodiversity Legal Foundation. The petitioner requested us to list *Botrychium lineare* as endangered or threatened and to designate critical habitat within a reasonable period of time following the listing. The petitioner submitted biological, distributional, historical, and other information and scientific references in support of the petition.

On May 10, 2000 (65 FR 30048), we published a 90-day petition finding concluding that the petition presented substantial information indicating that the requested action may be warranted. Accordingly, we initiated a status review pursuant to section 4(b)(3)(B) on the petitioned action.

We have reviewed the petition, and based on the best scientific and commercial information available, we believe that sufficient information is currently available to support a finding that listing *Botrychium lineare* as threatened is warranted, but that a proposed rule at this time is precluded by work on other higher priority listing actions.

Section 4(b) of the Act states that we may make warranted but precluded findings only if we find that (1) an immediate proposed rule is precluded by other pending actions, and (2) expeditious progress is being made on other listing actions. Due to the large amount of litigation we face, primarily over critical habitat, we are working on numerous listing actions mandated by court orders and settlement agreements. Complying with these orders and settlement agreements will consume nearly all or all of our listing budget for FY 2001. Any funding we may have available for discretionary listing actions will likely be allocated for emergency listings only. However, we can continue to place species on the candidate species list (Jamie Clark, Service, *in litt.* 2000).

Biology and Ecology

A member of the adder's-tongue family (Ophioglossaceae), *Botrychium lineare* is a small perennial fern with a pale green leaf (trochophore) from 6 to 18 centimeters (2 to 7 inches) long. Leaf segments are typically linear and

divided or forked at the ends. The sporophore (spore-bearing structure) is 1 to 2 times the length of the trochophore with a single main axis. Both the sporophore and the trochophore arise from an erect subterranean stem. Spores mature primarily in late June and July. Similar to other *Botrychium* species, the tiny, lightweight spores may be disseminated by wind, water, or possibly by animal vectors (Zika *et al.* 1995).

Surveys and field identification of moonworts are complicated by their biology. The plants are small, difficult to find, and are usually scarce. They cannot be positively identified in their immature states. Fronds may appear above ground during some growing seasons, or may not appear at all during unfavorable seasons (Vanderhorst 1997). *Botrychium lineare* was initially described in 1994 and is considered to be one of the more distinctive of the moonworts (Wagner and Wagner 1994). The nearest relative of *B. lineare* is thought to be *B. campestre*, a widespread species that is typically found at lower elevations (Wagner and Wagner 1994). Recent genetic studies have shown that although *B. lineare* is closely related to *B. campestre*, it is a distinct taxon (Farrar 2000). The *B. lineare* populations in Colorado, Oregon, Montana, and Washington are all genetically distinct from one another, which suggests a long period of isolation that is consistent with truly rare species (Donald Farrar, Iowa State University, *in litt.* 2000).

In the United States, *Botrychium lineare* is currently known from a total of nine populations: three in Colorado (El Paso and Lake counties), two in Oregon (Wallowa County), three in Montana (Glacier County), and one in Washington (Ferry County). In addition to the nine currently known *B. lineare* populations, there are four historic *B. lineare* population sites in the United States and two in Canada. Populations previously known from Idaho (Boundary County), Montana (Lake County), California (Fresno County), Colorado (Boulder County), and Canada (Quebec and New Brunswick), have not been seen for at least 20 years and may be extirpated (Wagner and Wagner 1994). The 90-day petition finding for this species (65 FR 30048) mentions a population previously known from Inyo County, California. However, we believe that the information regarding the location of this population (as published in Wagner and Wagner 1994) is incorrect, and that this site is probably in Fresno, not Inyo, County (Tim Thomas, Service, pers. comm. 1999).

The total number of individuals for all 9 occupied sites is about 190 (Edna Rey-Vizgirdas, Service, *in litt.* 2000). However, this number should be viewed as an estimate since *Botrychium* species do not always come up every year and exist below ground for most of their life cycle. Populations range in size from 2 to 100 individuals (E. Rey-Vizgirdas, *in litt.* 2000). Only 3 populations contain more than 15 individuals. Of the three largest populations, two are found in Montana (Glacier National Park and Blackfeet Indian Reservation) and one occurs in Colorado (Pikes-San Isabel National Forest). Of the remaining six *B. lineare* populations, four occur on Federal land, including the Pike-San Isabel National Forest (Colorado), Glacier National Park (Montana), Wallowa-Whitman National Forest (Oregon), and Colville National Forest (Washington). One population occurs on private land in Lostine Canyon, Oregon, which is a private inholding within the Wallowa-Whitman National Forest. The *B. lineare* site in Lake County, Colorado, is currently only known from a herbarium specimen consisting of two *B. lineare* plants collected in 1992 at approximately 3,243 meters (m) (10,640 feet (ft)) near Leadville, Colorado. This specimen was previously misidentified as *B. minganense* (Toby Spribille, Kootenai National Forest, *in litt.* 2000). No *B. lineare* plants were found at this site when it was surveyed in August 2000 (T. Spribille, *in litt.* 2000).

All *Botrychium* species are believed to be obligately dependent on mycorrhizal fungi (the symbiotic association of a fungus with the roots of a vascular plant) throughout their life cycle. A fungal associate is present within the plant at the earliest stages of development, and there are no reports of successful completion of the *Botrychium*'s life cycle without mycorrhizal fungi. Very little information exists regarding the specificity or habitat requirements of the mycorrhizal fungi that are associated with moonworts (Vanderhorst 1997). Similar to orchids, *Botrychium* species can remain dormant for 1 or more years, and cannot be identified with certainty in their immature stages. The ecology of moonworts and their vulnerability to management activities such as prescribed fire are not well understood (Zika *et al.* 1995; Vanderhorst 1997).

The habitat for *Botrychium lineare* has been described as "deep grass and forbs of meadows, under trees in woods, and on shelves on limestone cliffs, mainly at higher elevations" (Wagner and Wagner 1994), but they also state that to describe a typical habitat for this species would be problematic since the

known sites are so different. A specific habitat description for the species is difficult because of its current and historically disjunct distribution ranging from sea level in Quebec to nearly 3,000 m (9,840 ft) in Boulder County, Colorado. *Botrychium* spores are small and lightweight enough to be carried by air currents. This dispersal mechanism may explain the broad and often disjunct distribution patterns exhibited by moonworts (Vanderhorst 1997).

This species is found in a variety of montane forest or meadow habitats. Three of the known Montana *Botrychium lineare* populations occur on roadsides in early seral habitat (i.e., open habitat dominated by low-growing forbs (herbs) rather than shrubs or trees) (T. Spribille, *in litt.* 2000). Other *B. lineare* sites occur in grass-to forb-dominated openings in forests characterized by cone-bearing trees such as pine, spruce, and fir species (Paula Brooks, Wallowa-Whitman National Forest, *in litt.* 2000). At these occupied sites, *B. lineare* occurs with numerous associated species including *Fragaria virginiana* (strawberry), *Antennaria* spp. (pussy-toes), *Galium boreale* (northern bedstraw), *Potentilla* spp. (cinquefoil), *Symphoricarpos albus* (snowberry), *Vaccinium* spp. (huckleberry), *Calamagrostis* spp. (reedgrass), *Festuca* spp. (fescue), *Picea engelmannii* (Engelmann spruce), *Thuja plicata* (western red cedar), *Pseudotsuga menziesii* (Douglas-fir), *Pinus ponderosa* (ponderosa pine), *Pinus contorta* (lodgepole pine), and *Populus tremuloides* (aspen) (Steve Tapia, Pike-San Isabel National Forest, *in litt.* 2000; Kathleen Ahlenslager, Colville National Forest, *in litt.* 2000; E. Rey-Vizgirdas, pers. obs., 2000). Other *Botrychium* species, including *B. ascendens* (upward-lobed moonwort), *B. crenulatum* (wavy moonwort), *B. minganense* (Mingan Island moonwort), *B. lunaria* (common moonwort), and *B. montanum* (mountain moonwort), may also occur within or near habitat occupied by *B. lineare*. It is common for several *Botrychium* species to occur together in what has been called "genus communities" by researchers, a sympatric pattern of distribution which is unexplained (Vanderhorst 1997).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section

4(a)(1). These factors and their application to *Botrychium lineare* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Botrychium lineare* is threatened by impacts associated with recreational activities. For example, since the Hurricane Creek *B. lineare* site (Wallowa-Whitman National Forest) is adjacent to a popular hiking and pack trail, it may be affected by recreational impacts such as trampling or campfires. This site has been used for camping since it is relatively flat and close to the trailhead, and campfire rings were observed in the area (P. Brooks, pers. comm. 2000). The Hurricane Creek *B. lineare* population may also be threatened by livestock trampling (i.e., by pack animals), erosion, and exotic weeds (Oregon Natural Heritage Program 1999). The Lostine Canyon site, which occurs on a private inholding within the Wallowa-Whitman National Forest, is potentially threatened by development, timber harvest, and recreational activities (P. Brooks, pers. comm. 2000).

Two *Botrychium lineare* sites, one in Glacier National Park and one on the Blackfoot Indian Reservation in Montana, are located on roadsides where they may be affected by road maintenance activities, herbicide spraying, mowing, or by vehicles that pull off the road to look at wildlife (T. Spribille, *in litt.* 2000; Tara Williams, Glacier National Park, *in litt.* 2000). Although such activities are ongoing and have likely affected these sites in the past, the degree of disturbance and the timing of these activities may affect the survival and reproduction of this species. For example, road maintenance activities that occur prior to spore maturation and dispersal could adversely affect the reproduction of *B. lineare*. Herbicide spraying recently conducted along the road where *B. lineare* occurs on the Blackfoot Indian Reservation killed much of the roadside vegetation (Mary Weatherwax, Blackfoot Environmental Office, pers. comm. 2000). This site is the largest known *B. lineare* population and contains 100 plants (T. Spribille, *in litt.* 2000). The effects of this spraying on *B. lineare* are currently unknown. Future surveys should provide more information on the status of this population. The residual effect of herbicide spraying on *B. lineare* is unknown. Some herbicides are known to be resident in the soil for long periods of time, affecting the plants that persist there (65 FR 7339).

The *Botrychium lineare* site in Lake County, Colorado (near Leadville) is

apparently located within a Superfund site (T. Spribille, *in litt.* 2000). This site is currently threatened by activities and associated disturbance related to the construction of a concrete conduit. An asphalt bike path through the upper portion of the site was completed in July 2000, and major construction and excavation to install the concrete conduit was observed in August 2000. Although other *Botrychium* species, including *B. lunaria* and *B. minganense*, were found at this site, no *B. lineare* plants were observed despite intensive surveys conducted in August 2000 (T. Spribille, *in litt.* 2000).

Of the two *Botrychium lineare* populations on the Pike-San Isabel National Forest (Colorado), the larger population (based on number of individuals) occurs in a meadow with a utility pole (power line) approximately 30 m (100 ft) from the Pikes Peak toll road. Maintenance of this power line could potentially threaten the *B. lineare* population, but such maintenance would have to be coordinated with Forest staff (S. Tapia, *in litt.* 2000). Although the toll road itself is heavily used, the *B. lineare* site is located along the lower half of the road and receives little recreational use (S. Tapia, pers. comm. 1999).

Habitat succession and fire suppression may threaten *Botrychium lineare*. However, the relationship of habitat succession and fire suppression to the persistence of *B. lineare* is unclear. For example, in a biological assessment for sensitive plants in the Lostine River canyon, a U.S. Forest Service (Forest Service) botanist notes that "*Botrychium* species seem to be found in areas that receive natural disturbances such as fire and landslides but we are not yet able to predict what disturbance interval or successional stage best suits them" (Hustafa 1999). Controlled (prescribed) fires or wildfires could also affect habitat for *B. lineare*, but the response of this species to fire is not currently known. In some cases, wildfires or controlled fires create high ground temperatures which may sterilize the soil and eliminate fungal species that are necessary for the survival of moonworts (Zika 1992). We are not aware of any plans to implement controlled burning programs in *B. lineare* habitat at this time.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The plant is not a source for human food, nor is it currently of commercial horticulture interest. Therefore, overutilization is not considered to be a threat to this species at the present time.

C. Disease or predation. While disease is not currently known to be a threat to *Botrychium lineare*, populations may be affected by grazing by livestock or wildlife. The specific effects of grazing on the species are unknown, although if grazing by livestock or wildlife species occurs prior to the maturation and release of spores, the capacity for sexual reproduction of affected plants may be compromised. For example, the proximity of both *B. lineare* populations in Oregon to trails and developed recreation sites could result in grazing by horses or other domestic animals. One *B. lineare* site (on the Colville National Forest) occurs within a grazing allotment but is fenced to exclude livestock (K. Ahlenslager, *in litt.* 2000). Although open range grazing is common on the Blackfoot Indian Reservation, the *B. lineare* population on the Reservation appeared to be ungrazed when it was discovered in July 2000 by a Forest Service botanist (T. Spribille, *in litt.* 2000). *Botrychium lineare* has not been observed in areas with obvious disturbance by livestock (K. Ahlenslager, *in litt.* 2000; T. Spribille, *in litt.* 2000).

D. The inadequacy of existing regulatory mechanisms. *Botrychium lineare* is considered a sensitive species in Regions 2, 5, and 6 of the Forest Service, which include extant and historical *B. lineare* sites found in Colorado, Oregon, Washington, and California (Forest Service 1999, 2000; Joanna Clines, Sierra National Forest, *in litt.* 2000). The Forest Service has regulations that address the need to protect these sensitive species, as well as candidate, and federally listed species (e.g., the National Forest Management Act). Forest Service Regions 1 and 4, which include extant and historical sites found in Montana and Idaho, do not have *B. lineare* on their regional sensitive species lists (Teresa Prendusi, Forest Service, *in litt.* 2000; Steve Shelly, Forest Service, *in litt.* 2000); the species in these regions, therefore, is not given any special consideration. However, the Forest Service does prohibit the collection of any native plants without a permit on Forest Service lands. *Botrychium lineare* is not on Canada's list of threatened or vulnerable species, so there is no special protection for this species in Canada (Canadian Wildlife Service 2000).

Monitoring of some (but not all) *Botrychium lineare* populations on Federal lands has been initiated. Monitoring helps to identify threats and management actions that may be necessary to control habitat degradation and protect the species. Only one site, which occurs on the Colville National

Forest, has been fenced to protect the species from livestock grazing. However, some of the *B. lineare* sites on Federal lands are threatened by exotic weeds, herbicide spraying, trampling, and road construction and maintenance (see Factors A and E for additional information).

The National Park Service (Park Service) has policies to promote the conservation of federally listed or candidate species and other rare or sensitive species within park boundaries (T. Williams, *in litt.* 2000). However, as discussed previously, the two *Botrychium lineare* sites in Glacier National Park are located on roadsides where they may be subject to road maintenance activities or potential damage from vehicles. Therefore, long-term protection of these sites may be difficult due to their location (i.e., adjacent to roads, which are potentially a source of recurring disturbance).

Although *Botrychium lineare* is considered to be rare and imperiled by the State natural heritage programs in Colorado, Montana, Oregon, and Washington, the State heritage program rankings are not legal designations and do not confer State regulatory protection to this species.

E. Other natural or manmade factors affecting its continued existence. Non-native plant species may threaten habitat occupied by *Botrychium lineare*. Exotic species have been observed in the vicinity of *B. lineare* populations in Colorado (S. Tapia, *in litt.* 2000), Montana (T. Spribille, *in litt.* 2000), Oregon (Oregon Natural Heritage Program 1999), and Washington (K. Ahlenslager, *in litt.* 2000). Non-native plant species can compete with native plant species for resources such as space, nutrients, and water, and can replace them. As a result, the effects of non-native species may be especially serious for native taxa that have extremely small population sizes, such as *B. lineare*.

The amount of habitat occupied by *Botrychium lineare* is extremely small. Total habitat size for all extant sites, except for the Leadville and one Pikes Peak, Colorado, site, is approximately 1.15 hectares (ha) (2.85 acres (ac)), and nearly all of the sites are smaller than 465 square meters (5000 square feet). The *B. lineare* plants at the smaller Pikes Peak site have not been located in the last few years, and only two plants were previously known, so the actual amount of occupied habitat is likely to be extremely small. No *B. lineare* plants were found at the Leadville site in 2000, so it is not possible to estimate the amount of occupied habitat. Of the two *B. lineare* sites in Oregon, the Lostine

Canyon site occupies an area of approximately 10 × 10 m (30 × 30 ft) (Wagner and Wagner 1994), and the Hurricane Creek site is found in an area up to 1 ha (2.5 ac) in size (Oregon Natural Heritage Program 1999). The site in Washington (on the Colville National Forest) occupies an area of approximately 15 × 30 m (50 × 100 ft) (K. Ahlenslager, *in litt.* 2000). The larger of the two *B. lineare* populations on the Pike-San Isabel National Forest occupies an area of approximately 35 × 10 m (115 × 30 ft) (Carpenter 1996a, 1996b; Colorado Natural Heritage Program 1999). *Botrychium lineare* populations range in size from 2 to 100 plants, with only 3 populations supporting more than 15 individuals.

The small size of existing *Botrychium lineare* populations makes this species vulnerable to extirpation due to random naturally occurring events. A single random event could extirpate a substantial portion or all of the individuals at a given site. Also, changes in gene frequencies within small, isolated populations can lead to a loss of genetic variability and a reduced likelihood of long-term viability (Franklin 1980; Soulé 1980; Lande and Barrowclough 1987).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species. Only nine populations of *Botrychium lineare* are known to exist, and the small amount of occupied habitat and few individuals, combined with ongoing threats, make this species vulnerable to extinction. All of the remaining sites that support *B. lineare* are small and fragmented, and the various sites are vulnerable to impacts from factors including herbicide use, recreational activities, competition from non-native vegetation, road construction and maintenance, development, timber harvest, and incidental loss from trampling or grazing by wildlife or livestock. Also, all of these populations are particularly susceptible to extinction from random events because of their extremely small size. Existing regulatory mechanisms are inadequate to protect this taxon.

We conclude that the overall magnitude of threats to *Botrychium lineare* throughout its range is moderate and the overall immediacy of these threats is non-imminent. *Botrychium lineare* is considered a species without subspecies classification. Pursuant to our Listing Priority Guidance (48 FR 43098), a species for which threats are moderate and non-imminent is assigned a Listing Priority Number of 11. While we conclude that listing of *Botrychium*

lineare is warranted, an immediate proposal to list is precluded by other higher priority listing actions. During fiscal year 2001, we must spend nearly all of our Listing Program funding to comply with court orders and judicially approved settlement agreements, which are now our highest priority actions. *Botrychium lineare* will be added to the list of candidate species upon publication of this notice of 12-month finding. We will continue to monitor the status of the slender moonwort and other candidate species. Should an emergency situation develop with one or more of these species, we will act to provide immediate protection, if warranted.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Snake River Basin Office (see **ADDRESSES** section).

Author(s)

The primary authors of this document are Edna Rey-Vizgirdas, U.S. Fish and Wildlife Service, Snake River Basin Office (see **ADDRESSES** section), and Barbara Behan, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 9, 2001.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 01-14170 Filed 6-5-01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG99

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the O'ahu 'Elepaio

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U. S. Fish and Wildlife Service (Service), propose designation of critical habitat for the O'ahu 'elepaio, a bird, pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat consists of five units whose boundaries encompass a total area of approximately 26,853 hectares (ha)

(66,354 acres (ac)) on the island of O'ahu, Hawai'i.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. The primary constituent elements for the O'ahu 'elepaio are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering. All areas proposed as critical habitat for the O'ahu 'elepaio contain one or more of the primary constituent elements.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts. We may revise this proposal to incorporate or address new information received during the comment period.

DATES:

Comments

We will consider comments from all interested parties received by August 6, 2001.

Public Hearings

Requests for public hearing must be received by July 23, 2001.

ADDRESSES:

Comments

Send written comments on this proposed rule to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, Hawai'i 96850.

Availability of Documents

Supporting documentation and references used in the preparation of this proposed rule and all comments and materials received will be available for public inspection, by appointment, during normal business hours in the Pacific Islands Fish and Wildlife Office in Honolulu at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, or Eric VanderWerf, Biologist, U.S. Fish and Wildlife Service at the above address (telephone: 808/541-3441; facsimile: 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from a hot spot in the earth's

crust located near the current southeastern coast of the island of Hawai'i (Stearns 1985). O'ahu, the third oldest main island, is 2.5 million to 3.5 million years old and is heavily weathered. O'ahu has two principal mountain ranges, the Ko'olau and the Wai'anae Mountains, separated by a gently sloping plateau. The Ko'olau Mountains extend 60 kilometers (km) (37 miles (mi)) from northwest to southeast along the eastern half of the island. The windward (northeastern) slope of these mountains is characterized by steep cliffs and short ridges less than 6 km (4 mi) long. The leeward (southwestern) slope is characterized by parallel ridges as long as 18 km (11 mi), alternating with steep-sided stream valleys. The peak elevation in the Ko'olau Mountains occurs at Pu'u Kōnāhua-nui (955 meters (m); 3,105 feet (ft)). The drier Wai'anae Mountains run from northwest to southeast in a 32-km (20-mi) arc along the western half of O'ahu, in the rainshadow of the Ko'olau Range. Both the windward and leeward slopes of the Wai'anae Mountains are characterized by steep cliffs and ridges less than 5 km (3 mi) in length. The peak elevation occurs at Mt. Ka'ala (1,230 m; 4,025 ft). Approximately 36 percent (134,300 acres) of O'ahu is forested (Buck *et al.* 1988). Of these forested lands, approximately 49 percent is primarily native forest dominated by koa (*Acacia koa*) and 'ōhi'ā (*Metrosideros polymorpha*), with the remainder, 51 percent, dominated by introduced species, e.g., common guava (*Psidium guajava*), strawberry guava (*P. cattleianum*), christmasberry (*Schinus terebinthifolius*), mango (*Mangifera indica*), and several species of eucalypts (Buck *et al.* 1988).

The O'ahu 'elepaio (*Chasiempis sandwichensis ibidis*) is a small forest-dwelling bird (12.5 grams (0.43 ounces)) average weight; 15 centimeters (6 inches) total body length), and is a member of the monarch flycatcher family Monarchidae (VanderWerf 1998). It is dark brown above and white below, with light brown streaks on the breast. The tail is long (6.5 cm, 2.6 in.) and often held up at an angle. Adults have conspicuous white wing bars, a white rump, and white tips on the tail feathers. The throat is white with black markings in both sexes, but males tend to have more black than females, especially on the chin. Juveniles and subadults are rufous above and on the breast, with a white belly and rusty wing-bars. The bill is medium-length, straight, and black, with the base of the lower mandible bluish-gray in adults

and yellow in juveniles. The legs and feet are dark gray and the iris is dark brown. Males average approximately 10 percent larger than females in wing length, tarsus length, and weight, but bill length does not differ between the sexes (VanderWerf 1998).

Three subspecies of 'elepaio are recognized, each endemic to a single island: The O'ahu 'elepaio; the Hawai'i 'elepaio (*Chasiempis sandwichensis sandwichensis*); and the Kaua'i 'elepaio (*C. s. sclateri*). The forms on different islands are similar in ecology and behavior, but differ somewhat in coloration and vocalizations (Conant 1977, van Riper 1995, VanderWerf 1998). The taxonomy used in this rule follows Pratt *et al.* (1987) and Pyle (1997), in which all forms are regarded as subspecies, but the form on each island was originally described as a separate species. The O'ahu form was known as *C. s. gayi* (Wilson 1891) until Olson (1989) pointed out that the epithet *ibidis* (Stejneger 1887) has priority. The 'elepaio comprises a monotypic genus that is endemic to the Hawaiian archipelago (VanderWerf 1998). Its closest relatives are other monarch flycatchers from the Pacific region (Pratt *et al.* 1987, Sibley and Ahlquist 1985).

O'ahu 'elepaio occur in a variety of forest types, but are most common in riparian vegetation along streambeds and in mesic forest with a tall canopy and a well-developed understory (Shallenberger and Vaughn 1978, VanderWerf *et al.* 1997). Population density is roughly 50 percent lower in shorter dry forest on ridges (VanderWerf *et al.* 1997). They are not currently found in very wet, stunted forest on windswept summits or in very dry shrub land, but these areas may be used by individuals dispersing among populations. Forest structure appears to

be more important to 'elepaio than plant species composition (VanderWerf *et al.* 1997), and unlike many Hawaiian forest birds, 'elepaio have adapted well to disturbed forest composed of introduced plants (Conant 1977, VanderWerf *et al.* 1997, VanderWerf 1998). Fifty-five percent of the current range is dominated by introduced plants and 45 percent is dominated by native plants (Hawai'i Heritage Program 1991). This observation does not imply that 'elepaio prefer introduced plant species, but simply reflects a preference by 'elepaio for riparian vegetation in valleys and the high degree of habitat disturbance and abundance of introduced plants in riparian areas (VanderWerf *et al.* 1997). Of the 45 percent dominated by native plants, 23 percent is categorized as wet forest, 17 percent as mesic forest, and 5 percent as dry forest, shrub land, and cliffs (Hawai'i Heritage Program 1991).

Plant species composition in 'elepaio habitat varies considerably depending on location and elevation, but some of the most common native plants in areas where 'elepaio occur are 'ōhi'a, pāpala kēpau (*Pisonia umbellifera*), lama (*Diospyros sandwichensis*), māmakī (*Pipturus albidus*), kaulu (*Sapindus Oahuensis*), hame (*Antidesma platyphyllum*), and 'āla *Pouteria sandwichensis*), and some of the most common introduced plants are guava, strawberry guava, kukui (*Aleurites moluccana*), mango, Christmasberry, and ti (*Cordyline terminalis*) (VanderWerf *et al.* 1997, VanderWerf 1998).

The current population of O'ahu 'elepaio is approximately 1,982 birds distributed in six core subpopulations and several smaller subpopulations (Table 1, Figure 1; VanderWerf *et al.* in press). The only previous population estimate (200–500 birds; Ellis *et al.* 1992) was not accurate because little

information was available when the estimate was made. The number of birds is divided about evenly between the Wai'anae Mountains in the west and the Ko'olau Mountains in the east, with three core subpopulations in each mountain range. At least 10 tiny remnant subpopulations consisting mostly or entirely of males remain in both the Wai'anae and Ko'olau mountains (Table 1). These subpopulations were much larger or continuous with other subpopulations in the past, but because of their very small size, skewed sex ratio, and geographic isolation, these relicts likely will disappear in a few years as the last adults die.

The breeding population, about 1,774 birds, is less than the total population because of a male-biased sex ratio; only 84 percent of territorial males have mates in large populations ($n = 147$, E. VanderWerf unpubl. data), and many small, declining populations contain mostly males (Table 1). The effective population size is probably even smaller than the breeding population because of the geographically fragmented distribution (Grant and Grant 1992). Natal dispersal distances in 'elepaio are usually less than one km (0.62 mi) and adults have high site fidelity (VanderWerf 1998), but most 'elepaio populations on O'ahu are separated by many kilometers of unsuitable urban or agricultural habitat. There may be some exchange among subpopulations within each mountain range, but dispersal across the extensive pineapple fields that separate the Wai'anae and Ko'olau mountains is unlikely. While the current distribution superficially appears to constitute a metapopulation, it is uncertain if dispersal occurs among subpopulations.

TABLE 1.—ESTIMATED SIZE AND AREA OF O'AHU 'ELEPAIO SUBPOPULATIONS
[Data from VanderWerf *et al.* (in press). Letters before each subpopulation correspond to those on Figure 1.]

Subpopulation	Total population size	Breeding population size	Area (ha)
Wai'anae Mountains:			
A. southern Wai'anae (Honouliuli Preserve, Lualualei Naval Magazine)	458	418	1,170
B. Schofield Barracks West Range	340	310	532
C. Mākaha, Wai'anae Kai Valleys	123	112	459
D. Pahole, Kahanahāiki	18	4	256
E. Schofield Barracks South Range	6	0	20
F. Mākua Valley	7	2	49
G. Ka'ala Natural Area Reserve	3	0	21
H. Makaleha Gulch	2	0	7
I. Kuaokalā	3	2	14
J. Kaluakauila Gulch	1	0	6
Ko'olau Mountains:			
K. southern Ko'olau (Pia, Wailupe, Kapakahi, Kuli'ou'ou, Wai'alae Nui)	475	432	1,063
L. Waikāne, Kahana Valleys	265	242	523
M. central Ko'olau (Moanalua, north and south Hālawā, 'Aiea, Kaluauo)	226	206	1,396

TABLE 1.—ESTIMATED SIZE AND AREA OF O’AHU ‘ELEPAIO SUBPOPULATIONS—Continued
[Data from VanderWerf *et al.* (in press). Letters before each subpopulation correspond to those on Figure 1.]

Subpopulation	Total population size	Breeding population size	Area (ha)
N. Pālolo Valley	46	42	78
O. Waihee Valley	5	4	32
P. Mānoa	2	0	19
Q. Hau'ula	1	0	4
R. Waianu Valley	1	0	8
Total	1,982	1,774	5,657

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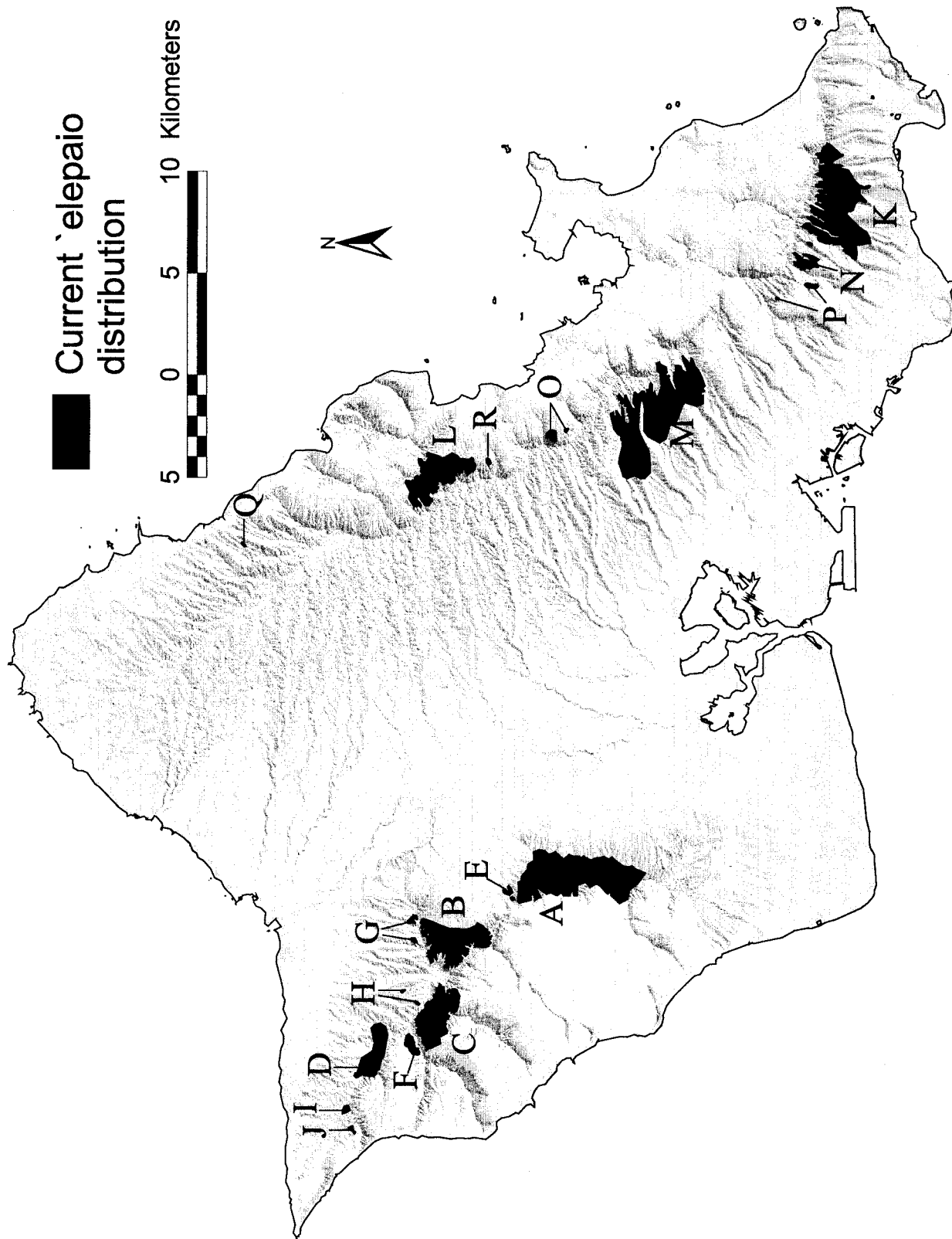


Figure 1. Current distribution of the O`ahu `Elepaio. Subpopulations are identified by letters corresponding to those in Table 1.

Before humans arrived, forest covered about 127,000 ha (313,690 ac) on O'ahu (Figure 2; Hawai'i Heritage Program 1991), and it is likely that 'elepaio once inhabited much of that area (VanderWerf *et al.* in press). Reports by early naturalists indicate that 'elepaio were once widespread and abundant on O'ahu. Bryan (1905) called the O'ahu 'elepaio "the most abundant Hawaiian species on the mountainside all the way from the sea to well up into the higher elevations." Perkins (1903) remarked on its "universal distribution * * *, from the lowest bounds to the uppermost edge of continuous forest." Seale (1900) stated the 'elepaio was "the commonest native land bird to be found on the island," while MacCaughy (1919) described it as "the most abundant

representative of the native woodland avifauna" and "abundant in all parts of its range." The historical range of the O'ahu 'elepaio thus apparently included most forested parts of the island, and it was formerly abundant.

Despite its adaptability, the O'ahu 'elepaio has seriously declined since the arrival of humans, and it has disappeared from many areas where it was formerly common (Shallenberger 1977, Shallenberger and Vaughn 1978, Williams 1987, VanderWerf *et al.* 1997). The aggregate geographic area of all current subpopulations is approximately 5,657 ha (13,972 ac; Table 1). The O'ahu 'elepaio thus currently occupies only about 4 percent of its original prehistoric range, and its range has declined by roughly 96

percent since humans arrived in Hawai'i 1,600 years ago (Kirch 1982). In 1975, 'elepaio inhabited approximately 20,900 ha (51,623 ac) on O'ahu, almost four times the area of the current range (Figure 2; VanderWerf *et al.* in press). The range of the O'ahu 'elepaio has thus declined by roughly 75 percent in the last 25 years.

Much of the historical decline of the O'ahu 'elepaio can be attributed to habitat loss, especially at low elevations. Fifty-six percent of the original prehistoric range has been developed for urban or agricultural use, and practically no 'elepaio remain in developed areas (VanderWerf *et al.* in press).

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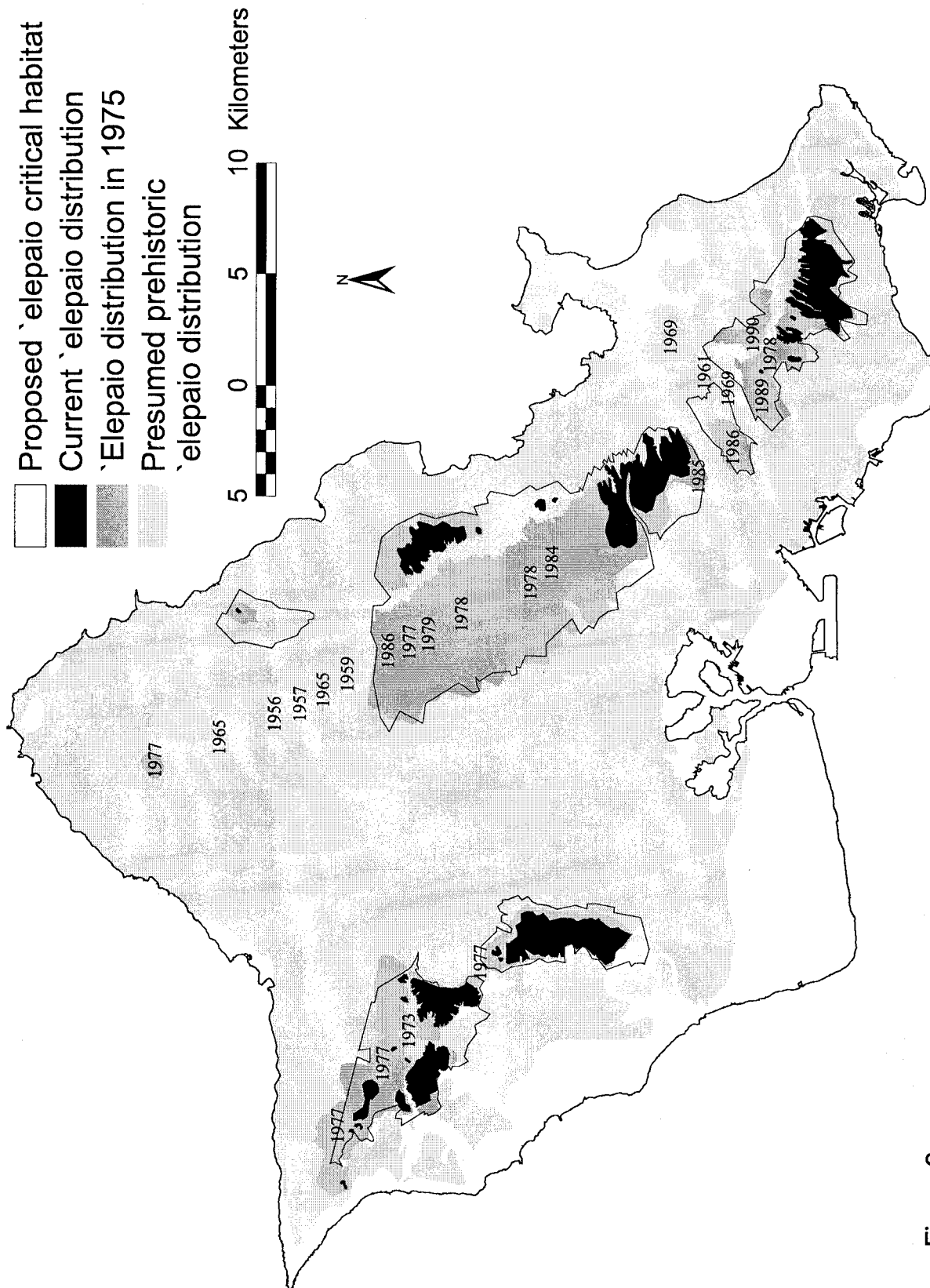


Figure 2.

Current, recent historical (1975), and presumed prehistoric distributions of O`ahu `elepaio. Years indicate when `elepaio were last observed in that area. Prehistoric distribution based on prehuman distribution of forest habitat (Hawai`i Heritage Program 1991).

However, many areas of O'ahu that recently supported 'elepaio and still contain apparently suitable forest habitat are currently unoccupied, demonstrating that habitat loss is not the only threat. Recent declines in O'ahu 'elepaio populations are due to a combination of low adult survival and low reproductive success. Both annual adult survival and reproductive success are lower on O'ahu (0.76, 0.33, respectively) than in a large, stable population of another subspecies of 'elepaio at Hakalau Forest National Wildlife Refuge on Hawai'i Island (0.85, 0.62; VanderWerf 1998). The main cause of reduced adult survival on O'ahu appears to be diseases, particularly avian pox (*Poxvirus avium*) and avian malaria (*Plasmodium relictum*), which are carried by the introduced southern house mosquito (*Culex quinquefasciatus*). Annual survival of birds with active avian pox lesions (60 percent) was lower than annual survival of healthy birds (80 percent; E. VanderWerf unpubl. data). Malaria is a serious threat to many Hawaiian forest birds (Warner 1968, van Riper *et al.* 1986, Atkinson *et al.* 1995), but its effect on 'elepaio has not been investigated.

The primary reason for low reproductive success is nest predation by the introduced black rat (*Rattus rattus*). An experiment in which automatic cameras were wired to artificial 'elepaio nests containing quail eggs showed that a black rat was the predator in all 10 predation events documented (VanderWerf in press). Control of rats with snap traps and diphacinone (an anticoagulant rodenticide) bait stations was effective at improving 'elepaio reproductive success, resulting in an 85 percent increase in nest success and a 127 percent increase in fledglings per pair compared to control areas (VanderWerf 1999). Reproductive success of 'elepaio is also affected by disease. Pairs in which at least one bird had pox lesions produced fewer fledglings than healthy pairs or those in which at least one bird had recovered from pox (E. VanderWerf, unpubl. data). Many birds with active pox did not even attempt to nest, and infected birds were sometimes deserted by their mate.

A comprehensive treatment of the life history and ecology of the 'elepaio is provided by VanderWerf (1998), from which much of the information below is taken. 'Elepaio are non-migratory and defend all-purpose territories year-round. The average territory size on O'ahu was 2.0 ha (4.94 ac) in forest composed of introduced plant species (Conant 1977), but territory size likely varies with vegetation structure.

Population density on O'ahu was 50 percent lower in short forest on ridges than in tall riparian forest along streambeds (VanderWerf *et al.* 1997), and for the related subspecies on Hawai'i, territory size was 50 percent larger in more disturbed forest with an open canopy and grass understory.

O'ahu 'elepaio are socially monogamous, and approximately 63 percent of pairs remain together each year (E. VanderWerf, unpubl. data). Site fidelity is high, with 96 percent of males and 67 percent of females remaining on the same territory from year to year. Annual survival of healthy adults is high, approximately 85 percent in males and 70 percent in females (E. VanderWerf, unpubl. data). Young birds wander (or float) while they attempt to acquire a territory and a mate.

The nesting season usually extends from mid February–May, but active nests have been found from January–July (VanderWerf 1998). Nest site selection is not specialized, and nests have been found in a variety of plants, including 6 native species and 13 introduced species (E. VanderWerf, unpubl. data). The nest is a finely-woven, free-standing cup made of rootlets, bark strips, leaf skeletons, lichen, and spider silk, and is placed in a fork or on top of a branch (Conant 1977, VanderWerf 1998). Both sexes participate in all aspects of nesting, but the female plays a larger role in nest building and the male provides more food for the nestlings. Clutch size is 1 to 3 eggs, usually 2, and eggs hatch after 18 days. The nestling period is 16 days. Fledglings are fed by their parents for more than a month after leaving the nest, and may remain in the natal territory for up to 9 months, until the start of the next breeding season. Fecundity (reproductive rate) is low; even if nest predators are removed the mean number of fledglings per pair is 0.75 per year (VanderWerf 1999). O'ahu 'elepaio will re-nest once or twice after failure, but they rarely attempt to re-nest if the first nest is successful. Other than introduced predators, storms with heavy rain and strong winds are the most common cause of nest failure.

The diet and foraging behavior of 'elepaio are extremely varied. The diet consists of a wide range of arthropods, particularly insects and spiders, and includes introduced species such as fruit flies (Tephritidae; VanderWerf 1998). Large prey, such as moths and caterpillars, are beaten against a branch before being eaten. In a study on Hawai'i Island, VanderWerf (1993, 1994) found that 'elepaio foraged at all heights on all available plant species, and that they caught insects from a

variety of substrates, including the ground and fallen logs (2 percent), trunks (5 percent), branches (24 percent), twigs (38 percent), foliage (20 percent), and in the air (11 percent). 'Elepaio are versatile and agile in pursuit of prey, using a diversity of foraging behaviors that is among the highest recorded for any bird, including perch-gleaning (48 percent), several forms of flight-gleaning (30 percent), hanging (11 percent), aerial flycatching (7 percent), and active pursuit (4 percent) (VanderWerf 1994).

Previous Federal Action

We were petitioned by Mr. Vaughn Sherwood on March 22, 1994, to list the O'ahu 'elepaio as an endangered or threatened species with critical habitat. The November 15, 1994, Animal Notice of Review (59 FR 58991) classified the O'ahu 'elepaio (then *Chasiempis sandwichensis gayi*) as a category 1 candidate. Category 1 candidates were those species for which we had sufficient data in our possession to support a listing proposal. On June 12, 1995 (60 FR 30827), we published a 90-day petition finding stating that the petition presented substantial information that listing may be warranted. On February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398), we published notices discontinuing candidate category designations, and the O'ahu 'elepaio was listed as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list as threatened or endangered. On October 6, 1998 (63 FR 53623), we published the proposed rule to list the O'ahu 'elepaio as an endangered species. Because *C. s. gayi* is a synonym of *C. s. ibidis*, the proposed rule constituted the final 12-month finding for the petitioned action. On April 18, 2000 (65 FR 20760), we published the final rule to list the O'ahu 'elepaio as an endangered species.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) also state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial

to the species. In the proposed listing rule we indicated that designation of critical habitat for the O'ahu 'elepaio was not prudent because we believed a critical habitat designation would not provide any additional benefit beyond that provided through listing as endangered. Based partly on comments we received on the proposed listing rule and on recent court rulings which address the prudency standard, in the final listing rule we determined that a critical habitat designation for the O'ahu 'elepaio was prudent because such a designation could benefit the species beyond listing as endangered by extending protection under section 7 of the Act to currently unoccupied habitat and by providing informational and educational benefits.

Although we determined in the final listing rule that critical habitat designation for the O'ahu 'elepaio would be prudent, we also indicated in the final listing rule that we were not able to develop a proposed critical habitat designation for the O'ahu 'elepaio at that time due to budgetary and workload constraints. However, on June 28, 2000, the United States District Court for the District of Hawai'i established, in the case of *Conservation Council for Hawai'i v. Babbitt*, CIV. NO. 00-00001 HG-BMK, a timetable to designate critical habitat for the O'ahu 'elepaio, and ordered that the Service publish the final critical habitat designation by October 31, 2001. This proposed rule responds to the court's order.

On November 9, 2000, we mailed letters to 32 landowners on O'ahu informing them that the Service was in the process of designating critical habitat for the O'ahu 'elepaio and requesting from them information on management of lands that currently or recently (within the past 25 years) supported O'ahu 'elepaio. The letters contained a fact sheet describing the O'ahu 'elepaio and critical habitat, a map showing the historic and current range of the O'ahu 'elepaio, and a questionnaire designed to gather information about land management practices, which we requested be returned to us by November 27, 2000. We received 11 responses to our landowner mailing with varying types and amounts of information on current land management activities. Some responses included detailed management plans, provided new information on locations where 'elepaio have been observed recently, and described management activities such as fencing, hunting, public access, fire management, methods for controlling invasive weeds and introduced

predators, and collaboration with conservation researchers. In addition, we met with several landowners and managers, including the U.S. Army and the Hawai'i State Division of Forestry and Wildlife, to obtain more specific information on management activities and suitability of certain habitat areas for 'elepaio. The information provided in the responses and during meetings was considered and incorporated into this proposed rule.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified or help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for

recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Section 4 requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Habitat areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR § 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the Oahu ʻelepaio. This information included: peer-reviewed scientific publications (Conant 1977; Banko 1981; VanderWerf 1993, 1994, 1998, in press; VanderWerf *et al.* 1997, in press); the final listing rule for the Oʻahu ʻelepaio (65 FR 20760); unpublished reports by the Hawaii State Division of Forestry and Wildlife (VanderWerf 1999); the Hawaii

Natural Heritage Program database; the Sightings database from the Occurrence and Status of Birds in Hawaii project maintained at Bishop Museum in Honolulu; the Oahu Forest Bird Survey conducted in 1991 by the Hawaii State Division of Forestry and Wildlife; field trip reports in the ʻElepaio (journal of the Hawaii Audubon society); and responses to the Oahu ʻelepaio critical habitat outreach package mailed to Federal, State, and private land managers and landowners.

The distribution and abundance of the Oʻahu ʻelepaio have declined seriously in the last few decades (Williams 1987; Oʻahu ʻelepaio final listing rule, 65 FR 20760; VanderWerf *et al.* in press). The area currently occupied by the Oʻahu ʻelepaio represents only about four percent of the species' original range, and the distribution has contracted into numerous small fragments (Figure 2). Moreover, the remaining ʻelepaio subpopulations are small and isolated, comprising six core subpopulations that contain between 100 and 500 birds, and numerous small remnant subpopulations, most of which contain fewer than 10 birds (Table 1). Even if the threats responsible for the decline of the ʻelepaio were controlled, the existing subpopulations would be unlikely to persist because their small sizes make them vulnerable to extinction due to a variety of natural processes. Small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and they may suffer a loss of genetic variability over time due to random genetic drift, resulting in decreased evolutionary potential and ability to cope with environmental change (Lande 1988, IUCN 2001). Small populations are also demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio and to catastrophes such as hurricanes (Lande 1988). Survival and reproduction of ʻelepaio are known to fluctuate among years in response to variation in disease prevalence and predator populations (VanderWerf 1998, 1999), possibly due to El Niño episodes and variation in rainfall, which may exacerbate the threats associated with small population size (Lande 1988).

ʻElepaio are highly territorial; each pair defends an area of a certain size, depending on the forest type and structure, resulting in a maximum population density or carrying capacity (VanderWerf 1998). Although ʻelepaio have declined island-wide and the range has contracted, density in the remaining core subpopulations is high, and much of the currently occupied land is at or near carrying capacity and cannot

support many more ʻelepaio than it currently supports (VanderWerf *et al.* 1997, in press). Consequently, each of the currently occupied areas is too small to support an ʻelepaio population large enough to be considered safe from extinction. In order for the number of birds in each subpopulation to increase, additional land must be available for young birds to establish new territories and attract mates. The potential for expansion is especially important for the smallest subpopulations that currently contain only a few individuals. Because of their very small size and often skewed sex ratio, these tiny subpopulations are unlikely to persist more than a few generations if limited to the currently occupied area.

ʻElepaio are also relatively sedentary; adults have high fidelity to their territory and juveniles rarely disperse more than one km (0.62 mi) in search of a territory (VanderWerf 1998). Because the areas currently occupied by ʻelepaio are separated from each other by many kilometers (Figure 1) and ʻelepaio are unlikely to disperse long distances, the existing subpopulations probably are isolated (VanderWerf *et al.* in press). The Oʻahu ʻelepaio evolved in an environment with large areas of continuous forest habitat covering much of the island (Figure 2), and their dispersal behavior is not adapted to a fragmented landscape. In the past, subpopulations were less isolated and dispersal and genetic exchange among different parts of the island probably was more frequent. Maintaining or restoring links among subpopulations by providing opportunities for dispersal would increase the overall effective population size through metapopulation interactions, thereby helping to alleviate the threats associated with small population size, and would better reflect the conditions under which the life history characteristics of dispersal evolved. In particular, enlargement of small subpopulations by expansion onto adjacent lands not only would increase the chances of their long-term survival, but also would improve connectivity among subpopulations by enhancing their value as "stepping stones" within the distribution of the entire population.

Section 3(5)(A)(i) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of the species. Because of the territorial nature of the Oʻahu ʻelepaio, its small total population size, limited range, fragmented distribution, and resulting vulnerability to genetic, demographic,

and environmental threats, we find that inclusion of currently unoccupied areas identified as containing the primary constituent elements is essential to the conservation of the species. The final rule listing the O'ahu 'elepaio as endangered emphasized that the "small total population size, limited distribution, and population fragmentation make this taxon particularly vulnerable to reduced reproductive vigor and the effects of naturally occurring events" (65 FR 20760). Recovery will require restoration of 'elepaio in areas that were formerly inhabited but that are not currently occupied, through natural dispersal, translocation, and/or release of captive birds. Unoccupied areas adjacent to currently occupied areas are needed for recovery to allow expansion of existing subpopulations and help alleviate the threats associated with small population size. Unoccupied lands linking subpopulations are needed for recovery to provide opportunities for dispersal among subpopulations and promote genetic exchange and metapopulation function. Specifically, each of the existing core populations in Pahole-Kahanahaiki, Makaha-Wai'anae Kai, Schofield Barracks West Range, the southern Wai'anae Mountains, the central leeward Ko'olau Mountains, Waikane-Kahana, and the southern leeward Ko'olau Mountains are small and isolated, and are unlikely to be viable on their own. The long-term chances for persistence of these subpopulations would increase if each subpopulation increased in size by expanding onto adjacent lands and if the connectivity among the subpopulations was enhanced by occasional dispersal of individuals across intervening lands.

We determined the amount and spatial arrangement of critical habitat needed to support a viable population of O'ahu 'elepaio. Because a recovery plan for the O'ahu 'elepaio has not been completed yet, in making this determination we looked to the historical distribution of the O'ahu 'elepaio for a model of a viable population. The best and most recent information available on the distribution of an apparently viable O'ahu 'elepaio population is from 1975, when extensive surveys were conducted over much of the island (Shallenberger 1977, Shallenberger and Vaughn 1978, Banko 1981). 'Elepaio began declining on O'ahu before 1975 and had already disappeared from some parts of the island (Figure 2; Conant 1977, Williams 1987, VanderWerf *et al.* in press), but in 1975 the subpopulations were still

relatively large and birds were distributed in two well-connected metapopulations, one in the Wai'anae Mountains and one in the Ko'olau Mountains. The areas occupied since 1975 also are likely to be most suitable for recovery because they supported 'elepaio for a longer period. The number and distribution of O'ahu 'elepaio in 1975 has allowed for the persistence of a population, albeit in a declining state, for more than 25 years. We believe that active management of threats, including nest predation and disease, in areas reflecting the distribution in 1975 would allow for long-term recovery. This approach is consistent with the approved recovery outline for the O'ahu 'elepaio; if, after critical habitat for the O'ahu 'elepaio is designated, a final approved recovery plan for Hawaiian forest birds calls for a different approach to the conservation of the O'ahu 'elepaio, we will consider amending the critical habitat designation, subject to resource and workload priorities.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such features are termed Primary Constituent Elements, and include but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals and other nutritional or physiological requirements; cover or shelter; sites for nesting and rearing of offspring; and habitats that are protected from disturbance and are representative of the historic geographical and ecological distributions of the species.

'Elepaio are adaptable and able to forage and nest in a variety of forest types composed of both native and introduced plant species (Conant 1977, VanderWerf 1993, 1994, 1998). Nest site selection by 'elepaio is non-specialized; nests have been found in seven native and 13 introduced plant species (E. VanderWerf, unpubl. data). Shallenberger and Vaughn (1978) found the highest relative abundance of 'elepaio in forest dominated by introduced guava and kukui trees, but they were also found in the following forest types (in order of decreasing abundance): mixed native-exotic; tall exotic; koa dominant; mixed koa-'hi'a; low exotic; 'hi'a dominant; and 'hi'a scrub. This distribution does not imply that 'elepaio prefer introduced plant

species, but probably reflects a preference by 'elepaio for riparian vegetation in valleys and the high degree of habitat disturbance and abundance of introduced plants in riparian areas. VanderWerf *et al.* (1997) found that (1) forest structure was more important to 'elepaio than plant species composition, (2) most birds occurred in areas with a continuous forest canopy and a dense understory, and (3) population density was roughly twice as high in tall riparian vegetation in valleys as in shorter forest on ridges. Fifty-five percent of the currently occupied area consists of forest dominated by introduced plant species, 23 percent is native wet forest, 17 percent is native mesic forest, and 5 percent is native dry forest and shrub land (VanderWerf *et al.* in press).

The primary constituent elements required by the O'ahu 'elepaio for foraging, sheltering, roosting, nesting, and rearing of young are found in undeveloped areas that support wet, mesic, and dry forest composed of both native and introduced plant species. Higher population density can be expected in tall, closed canopy riparian forest than in low scrubby forest on ridges and summits. In addition, the primary constituent elements associated with the biological needs of dispersal and genetic exchange among populations are found in undeveloped areas that support wet or dry shrub land and wet or dry cliff habitat. 'Elepaio may not establish territories in shrub or cliff habitats and may use them only transiently, but areas containing these habitats are important for linking populations by facilitating dispersal and promoting genetic exchange.

Criteria Used To Identify Critical Habitat

We used several criteria to identify and select lands proposed for designation as critical habitat. We began with all areas that are currently occupied by 'elepaio, excluding one very small, isolated subpopulation at Hau'ula that contains only a single male (Figure 1; subpopulation Q). We then added unoccupied lands containing the primary constituent elements that were needed for conservation of the species. As discussed in greater detail in the Methods section, in deciding which unoccupied areas were needed for recovery we used the distribution of 'elepaio in 1975 as a model of a viable population. Within this area of distribution in 1975 we gave preference to lands that (a) provided more preferred forest types, (b) were more recently occupied (since 1975), and (c) were contiguous and formed large

blocks of preferred habitat or provided links between areas of preferred habitat. We determined the boundaries of proposed critical habitat units by the extent of suitable forest containing the primary constituent elements, which in many areas coincided with the boundaries of State Forest Reserves, Natural Area Reserves, or other conservation lands. We did not include urban and agricultural lands because they generally do not contain the primary constituent elements and do not meet the definition of critical habitat. We included lower Wailupe Valley, however, which is zoned for urban use but has not yet been developed, because it contains the primary constituent elements and is currently occupied by 'elepaio, and therefore meets the definition of critical habitat.

We were unable to map the proposed critical habitat unit boundaries in sufficient detail to exclude all existing developed lands that do not contain the primary constituent elements. However, existing development features and structures within the boundaries of the

mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas that do not contain the primary constituent elements are not proposed as critical habitat. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

Lands proposed as critical habitat occur in five separate units and provide the full range of primary constituent elements needed by the O'ahu 'elepaio, including: a variety of currently occupied undeveloped forested areas that are used for foraging, roosting, sheltering, nesting, and raising offspring; a variety of currently unoccupied undeveloped forested areas that are adjacent to occupied areas and provide for expansion of existing subpopulations; and shrub land and cliff habitats that link subpopulations and are used for dispersal. If 'elepaio were restored throughout each of the

proposed critical habitat units, the resulting distribution would closely resemble the distribution in 1975, when the subpopulations were larger and less isolated, the overall population appeared to be viable, and when the O'ahu 'elepaio was not considered endangered. The area proposed as critical habitat (26,733 ha) is larger than the area occupied in 1975 (20,900 ha) because the proposed critical habitat contains not only lands expected to support breeding 'elepaio populations, but also intervening lands that provide for periodic dispersal and not permanent occupation.

The potential 'elepaio population in the area proposed as critical habitat is 10,104 birds, as estimated by multiplying the current density of 'elepaio in different parts of the island by the area of each critical habitat unit (Table 2). These estimates are approximate, and the actual population in each unit may be larger if density can be increased beyond current levels, or lower if it proves difficult to establish dense populations in some currently unoccupied areas.

TABLE 2.—PROPOSED CRITICAL HABITAT UNITS AND POTENTIAL 'ELEPAIO POPULATIONS

[Data on current density from VanderWerf *et al.* (in press). Unit 4 is not currently occupied by 'elepaio; the density used to estimate the potential 'elepaio population of this unit is an average of the densities in the two nearest units, central and southern Ko'olau.]

Critical habitat unit	Area	'Elepaio density in currently occupied parts of unit	Potential 'elepaio population in unit
1. Northern Wai'anae Mountains	4,501 ha 11,122 ac	0.45 per ha 0.18 per ac	2,025
2. Southern Wai'anae Mountains	2,515 ha 6,215 ac	0.39 per ha 0.16 per ac	981
3. Central Ko'olau Mountains	14,840 36,669 ac	0.33 per ha 0.14 per ac	4,897
4. Kalihi-Kapālama	800 ha 1,977 ac	0.39 per ha 0.16 per ac	312
5. Southern Ko'olau Mountains	4,197 ha 10,371 ac	0.45 per ha 0.18 per ac	1,889
All Units	26,853 66,354 ac	0.38 per ha 0.15 per ac	10,104

The approximate area and land ownership within each proposed critical habitat unit are shown in Table 3. Proposed critical habitat includes land under Federal, State, and private ownership, with Federal lands being managed by the Department of Defense and the Department of the Interior. Proposed lands include most (99 percent) of the species' current range and encompass approximately 21 percent of the species' original range. Approximately 21 percent of proposed lands are currently occupied by 'elepaio, and 79 percent are currently unoccupied but were recently occupied (since 1975). A detailed description of each unit and reasons for proposing each portion of the unit as critical habitat are presented below.

TABLE 3.—APPROXIMATE AREA (HECTARES, ACRES) OF PROPOSED CRITICAL HABITAT UNITS BY LAND OWNERSHIP

Unit	Federal ¹	State	County	Private	Total
1. Northern Wai'anae Mountains	822 ha 2,031 ac	3,033 ha 7,495 ac	646 ha 1,596 ac		4,501 ha 11,122 ac
2. Southern Wai'anae Mountains	616 ha 1,523 ac	377 ha 932 ac		1,522 ha 3,760 ac	2,515 ha 6,215 ac
3. Central Ko'olau Mountains	3,109 ha	3,789 ha	308 ha	7,634 ha	14,840 ha

TABLE 3.—APPROXIMATE AREA (HECTARES, ACRES) OF PROPOSED CRITICAL HABITAT UNITS BY LAND OWNERSHIP—Continued

Unit	Federal ¹	State	County	Private	Total
4. Kalihi-Kap'alama	7,681 ac	9,363 ac 393 ha	762 ac 179 ha	18,863 ac 228 ha	36,669 ac 800 ha
5. Southern Ko'olau Mountains	3 ha 7 ac	2,563 ha 6,334 ac	480 ha 1,187 ac	1,151 ha 2,843 ac	4,197 ha 10,371 ac
Total	4,550 ha 11,242 ac	10,155 ha 25,095 ac	1,613 ha 3,987 ac	10,535 ha 26,030 ac	26,853 ha 66,354 ac

¹ Federal lands include Department of Defense and U.S. Fish and Wildlife Service.

Unit 1: Northern Wai'anae Mountains

Unit 1 consists of approximately 4,501 ha (11,122 ac) encompassing the higher elevations of the northern Wai'anae Mountains. It is bounded on the south by Kolekole pass, and on the north, east, and west by forest edge created by human actions. Natural features within the unit include Mt. Ka'ala, the highest peak on O'ahu at 1,227 m (4,025 feet), several other high peaks along the spine of the Wai'anae Range, the upper portions of large, broad valleys on the slopes of the Wai'anae Range, including Wai'anae Kai, Mākaha, Mākua, Kahanahāiki, and Kuaokalā valleys on the west slope and Hale'au'au and Mohi'akea gulches on the east slope, and the higher portions of several narrow valleys on the north slope of the Wai'anae Range. Vegetation consists primarily of mixed-species wet, mesic, and dry forest communities composed of native and introduced plants, with smaller amounts of dry shrub land and cliff plant communities (Hawaii Heritage Program 1991).

Unit 1 contains two important 'elepaio core subpopulations: one in upper Hale'au'au and Mohi'akea gulches above the firebreak road on U.S. Army Schofield Barracks West Range; the other in upper Mākaha and Wai'anae Kai valleys on Wai'anae Kai State Forest Reserve and City and County of Honolulu land. The unit also includes small scattered 'elepaio subpopulations in Pahole and Ka'ala State Natural Area Reserves, Mokulāia, Mākua-Kea'au, and Kuaokalā State Forest Reserves, and the upper portion of the U.S. Army Mākua Military Reservation. In addition to protecting lands occupied by the two core 'elepaio subpopulations and six smaller subpopulations, proposed lands in Unit 1 provide for expansion of these subpopulations by including currently unoccupied lands that were occupied within the past 30 years and contain the most preferred types of forest. Specifically, currently unoccupied lands in Pahole and Ka'ala State Natural Area Reserves, Mokulāia, Mākua-Kea'au, and Kuaokalā State Forest Reserves,

upper Mākua Valley, and upper Kahanahāiki Valley are needed for recovery to allow the number of birds in existing subpopulations to increase. In addition, the current distribution of 'elepaio in Unit 1 represents a remnant of what was once a single large continuous 'elepaio population in the northern Wai'anae Mountains. Inclusion of currently unoccupied forested lands that provide for subpopulation expansion and shrub land and cliff habitats that provide for dispersal among subpopulations will promote needed linkage among subpopulations and help to restore the original metapopulation function that once existed in this area.

Unit 2: Southern Wai'anae Mountains

Unit 2 consists of approximately 2,515 ha (6,215 ac) encompassing the higher elevations of the southern Wai'anae Mountains. It is bounded on the north by Kolekole Pass, and on the east, west, and south by forest edge created by human actions. Natural features of the unit include several high peaks along the spine of the southern Wai'anae Range, including Palikea, Kaua, Kānehoa, and Hāpapa, the upper portions of Lualualei and Nānākuli valleys on the west side of the mountains, and the upper portions of numerous narrower valleys on the east side of the mountains. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants, with smaller amounts of dry shrub land and cliff communities (Hawaii Heritage Program 1991).

Unit 2 contains the second largest O'ahu 'elepaio subpopulation, encompassing several land parcels, including Honouliuli Preserve (which is managed by The Nature Conservancy of Hawaii), Naval Magazine Pearl Harbor Lualualei Branch, Nānākuli State Forest Reserve, and other unmanaged State lands. This unit also contains several scattered 'elepaio territories north of the core subpopulation on U.S. Army Schofield Barracks South Range. In

addition to protecting currently occupied habitat, proposed lands in Unit 2 include peripheral areas of currently unoccupied habitat in Honouliuli Preserve, Lualualei, and Schofield Barracks South Range that are needed for recovery to allow expansion of the core subpopulation, and dry shrub land and cliff habitats on unmanaged State land between Lualualei and Honouliuli and on Schofield Barracks South Range that provide for dispersal among parts of the southern Wai'anae subpopulation and between the northern and southern Wai'anae subpopulations.

Unit 3: Central Ko'olau Mountains

Unit 3 is the largest unit, encompassing 14,840 ha (36,669 ac) of the higher elevations of the central Ko'olau Mountains. Natural features of the unit include the summit of the Ko'olau Range and the upper portions of numerous narrow valleys separated by steep ridges, including (from south to north) Manaikāi, Moanalua, South Hālawā, North Hālawā, Kalauao, Waimalu, Waimano, Mānana, Waiawa, Kāpapa, Kaukonahua, and Poamoho on the leeward (western) side, and Waihe'e, Ka'ala'ea, Wai'āhole, Waikāne, and Kahana on the windward (eastern) side. Vegetation consists primarily of montane and lowland wet and mesic forest, and smaller areas of shrub land and wet cliff plant communities (Hawaii Heritage Program 1991). The higher elevations of the unit are primarily native forest dominated by ōhi'a and koa, but the lower elevations are more disturbed and dominated by a variety of introduced plant species.

Unit 3 contains two important core 'elepaio subpopulations: one located almost entirely on private land in Moanalua, North and South Hālawā, Mānaiki, and Kalauao valleys at the southern end of the unit; the other on the windward side in Kahana Valley State Park and on private lands in Waikāne Valley. The unit also contains a few scattered 'elepaio territories in Waihole State Forest Reserve. Proposed

lands include the existing subpopulations, and also provide for the expansion and recovery of existing subpopulations by including adjacent lands in Manaiki, Waimalu, Waimano, Mānana, Waiawa, Kāpapa, Kaukonahua, and Poamoho on the leeward (western) side, and in Waiheʻe, Kaālāea, Waiāhole, Waikāne, and Kahana on the windward (eastern) side that are currently unoccupied but were occupied since 1975. Unit 3 also includes wet shrub land and cliff habitats along the Koʻolau summit that provide for dispersal of ʻelepaio between the windward and leeward sides of the Koʻolau Mountains. The existing core subpopulations are geographically distant from each other and probably are isolated. Restoration of ʻelepaio in intervening areas would increase the chances of dispersal and genetic exchange between subpopulations and restore metapopulation function. Currently unoccupied habitat lies on the Oāhu Forest National Wildlife Refuge, U.S. Army Schofield Barracks East Range, U.S. Army Fort Shafter, ʻEwa and Waiāhole State Forest Reserves, Kahana Valley State Park, and 9 privately owned parcels. The narrow indentation in the southern portion of Unit 3 reflects the H-3 freeway and adjacent cleared areas in North Hālawā Valley.

Unit 4: Kalihi-Kapālama

Unit 4 consists of approximately 800 ha (1,977 ac) encompassing the higher elevations of the leeward (western) side of the central Kʻoolau Mountains above Kalihi and Kapālama. It is bounded on the north by the Likelike Highway and on the south by the Pali Highway. Natural features of the unit include the upper portions of Kalihi, Kamaikai, and Kapālama valleys. Vegetation consists primarily of mixed-species wet and mesic forest composed of native and introduced plant species (Hawaii Heritage Program 1991). The higher elevations are primarily native forest dominated byōhia and koa, but the lower elevations are more disturbed and are dominated by introduced plant species. This unit is not known to contain any ʻelepaio at present, but it was occupied within the last 20 years, still contains suitable forest habitat, and provides an important habitat stepping-stone that increases the chances of dispersal and genetic exchange between ʻelepaio subpopulations in the central and southern Kʻoolau units. This unit includes lands within the State of Hawaii Honolulu Watershed Forest Reserve, two parcels owned by the City and County of Honolulu, and 3 private parcels.

Unit 5: Southern Kʻoolau Mountains

Unit 5 consists of approximately 4,197 ha (10,371 ac) encompassing the higher elevations of the southern Kʻoolau Mountains. It is bounded on the west by the Pali Highway. Natural features of the unit include: the summit of the southern Kʻoolau Mountains, including Konahuanui, the highest peak in the Kʻoolau Range at 960 m (3,150 ft), the upper portion of Maunawili Valley on the windward (northern) side of the mountains, and the upper portions of numerous narrow valleys separated by steep ridges on the leeward side, including (from east to west) Kālakei, Kulioūou, Kūpaua, Pia, Kulūi, Wailupe, Kapakahi, Waialae Nui, Pālolo, Mānoa, Tantalus, and Pauoa. The vegetation consists primarily of mixed-species wet, mesic, and dry forest communities, with small areas of mesic shrub land and wet cliff plant communities (Hawaii Heritage Program 1991). The higher elevations are primarily native forest dominated byōhia and koa, but the lower elevations are more disturbed and are dominated by introduced plant species, particularly guava, kukui, christmasberry, and mango.

Unit 5 contains the largest remaining ʻelepaio subpopulation, located in Kulioūou, Kūpaua, Pia, Kulūi, Wailupe, Kapakahi, and Waialae Nui valleys, and two smaller ʻelepaio populations located nearby in Pālolo and Mānoa valleys. The current distribution of ʻelepaio in the southern Kʻoolau Mountains represents a remnant of what was once a single large continuous population. In addition to protecting the largest remaining subpopulation and two smaller subpopulations, proposed lands in Unit 5 provide for recovery through expansion of existing subpopulations by including currently unoccupied lands in Maunawili, Pālolo, Mānoa, Nūuanu, Tantalus, and Pauoa that were occupied since 1975 and contain the most preferred forest types. Proposed lands in Unit 5 also provide for recovery by including shrub land and wet cliff habitats along the Koʻolau summit that are used for dispersal and link subpopulations on the windward and leeward sides of the Kʻoolau Mountains, thereby helping to restore metapopulation function. Restoration of ʻelepaio in unoccupied lands in Tantalus and Pauoa at the western end of Unit 5 would increase the chances of dispersal and genetic exchange between the southern Kʻoolau subpopulation and the central Kʻoolau subpopulation. Ownership within Unit 5 consists of the Honolulu Watershed, Maunawili, and Kulioūou State Forest Reserves, several

parcels owned by the City and County of Honolulu, and nine private parcels.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, states, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species nor to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation the Federal action agency would ensure that

the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect thelepaio or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, or Natural Resources Conservation Service) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be

affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the survival and recovery of the 'elepaio is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that may directly or indirectly adversely affect critical habitat for the O'ahu 'elepaio include, but are not limited to:

(1) Removing, thinning, or destroyinglepaio habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (e.g., woodcutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.).

(2) Appreciably decreasing habitat value or quality as an indirect effect of an action (e.g., introduction or promotion of potential nest predators, diseases or disease vectors, vertebrate or invertebrate food competitors, or invasive plant species; forest fragmentation; overgrazing; augmentation of feral ungulate populations; water diversion or impoundment, groundwater pumping, or other activities that alter water quality or quantity to an extent that affects vegetation structure or produces mosquito breeding habitat; and activities that increase the risk of fire).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the

proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, critical habitat designation in unoccupied areas may trigger consultation under section 7 of the Act where it would not have otherwise occurred if critical habitat had not been designated.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Development on private or State lands requiring permits from other Federal agencies, such as Housing and Urban Development;

(4) Military training or similar activities of the U.S. Department of Defense (Army and Navy) on their lands or lands under their jurisdiction at Schofield Barracks, Mākuā Military Reservation, Fort Shafter, Kawaiiloa Training Area, and Pearl Harbor Naval Magazine Lualualei Branch;

(5) Construction of communication sites licensed by the Federal Communications Commission;

(6) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(8) Activities not previously mentioned that are funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), Environmental Protection Agency, or any other Federal agency.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and

permits should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program at the same address.

Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the O'ahu 'elepaio and do not require special management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this proposed rule.

To determine if a plan provides adequate management or protection we consider: (1) Whether there is a current plan specifying the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether: (a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example, by a legal

instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether: (a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

Based on information provided to us by landowners and managers to date, we find that no areas are adequately managed and protected to address the threats to 'elepaio. Several areas are covered under current management plans and are being managed in a manner that meets some of the conservation needs of the O'ahu 'elepaio, but in no areas does the management adequately reduce the primary threats to this species. Specifically, the threat from introduced nest predators, primarily rodents, has been successfully managed on a small scale in Honouliuli Preserve by The Nature Conservancy of Hawai'i, in Schofield Barracks West Range and M'kua Military Reservation by the U.S. Army, and in the Honolulu Watershed Forest Reserve by the Hawai'i State Division of Forestry and Wildlife, but in each case the management actions have affected only a small proportion of the 'elepaio in the area. Adequate reduction of the threat from rodents will require larger scale management that protects more 'elepaio. The other primary threat to the O'ahu 'elepaio, introduced diseases carried by mosquitoes, has not been managed in any area.

The O'ahu Forest National Wildlife Refuge does not meet these criteria because the refuge was created only recently (December 2000) and there is no current management that meets the recovery needs of the O'ahu 'elepaio. Refuge lands have not been adequately surveyed yet, and even whether the area is currently occupied by 'elepaio remains uncertain.

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to

provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat. To date, no military installation on O'ahu has completed a final INRMP that provides sufficient management and protection for the 'elepaio.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**.

Currently, there are no habitat conservation plans (HCPs) that include the O'ahu 'elepaio as a covered species. However, we believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs are developed within the boundaries of proposed or designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and

management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of the O'ahu 'elepaio and appropriate management for those lands. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule and provide for the conservation of the covered species. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat. If an HCP that includes the O'ahu 'elepaio is ultimately approved after this critical habitat designation is finalized, we will reassess the critical habitat boundaries in light of the HCP. We will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the number and distribution of O'ahu 'elepaio and what habitat is essential to the conservation of this species and why;

(3) Whether lands within proposed critical habitat are currently being managed to address conservation needs of the O'ahu 'elepaio;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in

particular, any impacts on small entities or families;

(6) Whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat and, if so, by what mechanism; and,

(7) Economic and other values associated with designating critical habitat for the O'ahu 'elepaio, such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

If we receive information that any of the areas proposed as critical habitat are currently being managed to address the conservation needs of the O'ahu 'elepaio and provide adequate management and protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in the final critical habitat designation for the O'ahu 'elepaio. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850.

2. You may hand deliver written comments to our Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, Hawai'i.

3. You may send comments by electronic mail (e-mail) to FW1PIE_OahuElep_crithab@r1.fws.gov. If you are sending comments by electronic mail (e-mail), please submit them in ASCII file format or embedded in the text of the e-mail message, and avoid the use of special characters and encryption. Please include "Attn: 1018-AG99" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Fish and Wildlife Service Office at phone number 808/541-3441. Please note that the e-mail address (FW1PIE_OahuElep_crithab@r1.fws.gov) will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office in Honolulu.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat. We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) Is the background information useful

and is the amount appropriate? (6) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore, we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 4 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of this species. Based upon our experience with this species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse

modification of proposed critical habitat would currently be considered as "jeopardy" under the Act in areas occupied by the species. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons that do not have Federal involvement in their actions are not restricted by the designation of critical habitat.

TABLE 4.—IMPACTS OF O'AHU 'ELEPAIO LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation ¹
Federal activities potentially affected. ²	Activities the Federal Government carries out that result in removing, thinning, or destroying 'elepaio habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (e.g., woodcutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (e.g., introduction or promotion of potential nest predators, diseases or disease vectors, vertebrate or invertebrate food competitors, or invasive plant species, forest fragmentation, overgrazing, augmentation of feral ungulate populations, water diversion or impoundment, groundwater pumping, or other activities that alter water quality or quantity to an extent that affects vegetation structure or produces mosquito breeding habitat, and activities that increase the risk of fire).	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal activities potentially affected. ³	Activities funded, authorized, or permitted by the Federal Government that results in removing, thinning, or destroying 'elepaio habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (e.g., woodcutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (e.g., introduction or promotion of potential nest predators, diseases or disease vectors, vertebrate or invertebrate food competitors, or invasive plant species, forest fragmentation, overgrazing, augmentation of feral ungulate populations, water diversion or impoundment, groundwater pumping, or other activities that alter water quality or quantity to an extent that affects vegetation structure or produces mosquito breeding habitat, and activities that increase the risk of fire).	These same activities funded, authorized, or permitted by Federal Agencies in a designated area where section 7 consultations would not have occurred but for the critical habitat designation.

¹ This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

² Activities initiated by a Federal agency.

³ Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal

agencies have been required to ensure that their actions not jeopardize the continued existence of the O'ahu

'elepaio since its listing in May 2000. The prohibition against adverse modification of critical habitat would

not be expected to impose any additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule, if made final, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

In the economic analysis (required under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas where section 7 consultations would have occurred as result of the species being listed under the Act. We will also evaluate whether designation includes any areas where section 7 consultations would occur only as result of the critical habitat designation, and in such cases determine if it will significantly affect a substantial number of small entities. As indicated in Table 3 (see Proposed Critical Habitat Designation section), we propose designation on property owned by local governments and private property. Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Development on private or State lands requiring permits from other Federal agencies, such as Housing and Urban Development;

(4) Military training or similar activities of the U.S. Department of Defense (Army and Navy) on their lands or lands under their jurisdiction at Schofield Barracks, Mākuā Military Reservation, Fort Shafter, Kawaihoa Training Area, and Pearl Harbor Naval Magazine Lualualei Branch;

(5) Construction of communication sites licensed by the Federal Communications Commission;

(6) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(8) Activities funded by the U. S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

Potentially some of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas where section 7 consultations would occur regardless of the critical habitat designation. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

Executive Order 13211

On May 18, 2001, the President issued Executive Order EO 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this final rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) We believe this rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the species. The rule will not increase or decrease the current restrictions on private property concerning take of this species. We do not anticipate that property values will be affected by the critical habitat designation. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in

ways consistent with State law and with the continued survival of the species.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the Oahu 'elepaio would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the O'ahu 'elepaio.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining our reason for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The proposed designation of critical habitat for the O'ahu 'elepaio does not contain any Tribal lands or lands that we have

identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Fish and Wildlife Office (see ADDRESSES section).

Author

The primary author of this document is Eric A. VanderWerf, Pacific Islands Fish and Wildlife Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

- 1. The authority citation for part 17 continues to read as follows:
Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.
- 2. In § 17.11(h) revise the entry for “‘Elepaio, O’ahu” under “BIRDS” to read as follows:
§ 17.11 Endangered and threatened wildlife.
* * * * *
(h) * * *

Species		Historic range	Vertebrate popu- lation where endan- gered or threatened	Status	When listed	Critical habi- tat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	*
BIRDS							
*	*	*	*	*		*	*
'Elepaio, O'ahu	<i>Chasiempis sandwichensis ibidis</i> (<i>Chasiempis sandwichensis gayi</i>).	U.S.A. (HI)	Entire	E		17.95(b)	
*	*	*	*	*		*	*

- 3. Amend § 17.95(b) by adding critical habitat for the O'ahu 'Elepaio (*Chasiempis sandwichensis ibidis*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:
§ 17.95 Critical habitat—fish and wildlife.
* * * * *

- (b) Birds.
* * * * *
O'ahu 'elepaio (*Chasiempis sandwichensis ibidis*)
1. Critical Habitat Units are depicted for the City and County of Honolulu on the maps following.
2. Within these areas, the primary constituent elements required by the

O'ahu 'elepaio are those habitat components that are essential for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young. The primary constituent elements are provided in undeveloped areas that support various types of wet, mesic, and dry forest with a generally continuous canopy and a dense understory and that

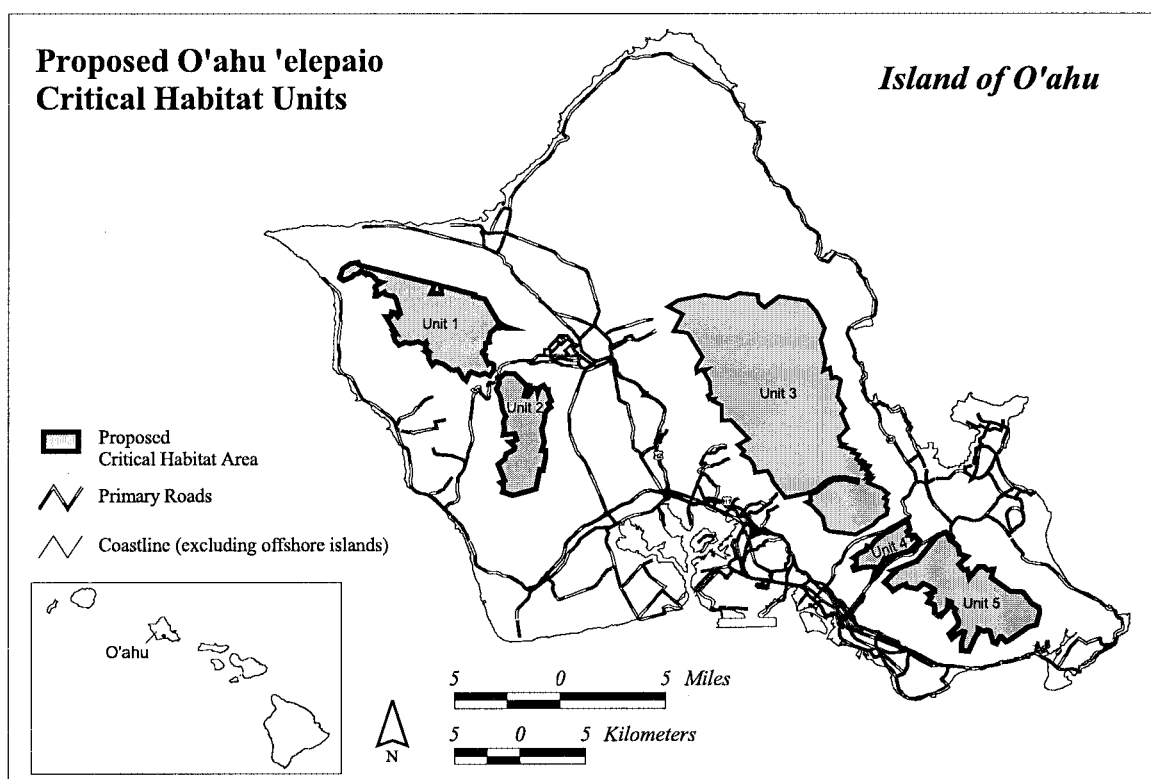
are composed of native or introduced plant species. Such forests are found in valleys and on mountain slopes and ridges. The primary constituent elements associated with the biological needs of dispersal and genetic exchange are found in undeveloped areas that separate 'elepaio populations and support wet or dry shrub land and wet or dry cliff habitat composed of native or introduced species. 'Elepaio may not establish territories in shrub or cliff habitats and may use them only transiently, but undeveloped areas containing these habitats are important for linking populations by providing dispersal corridors and promoting genetic exchange among populations.

Within the forests and shrub lands providing the primary constituent elements, plant species composition varies with rainfall, elevation, and degree of habitat disturbance and plant species occur in a variety of assemblages. Dominant native and introduced species within these plant assemblages include, but are not limited to, 'ōhi'a (*Metrosideros polymorpha*), koa (*Acacia koa*), pāpala kēpau (*Pisonia umbellifera*), lama (*Diospyros sandwicensis*), mānaki (*Pipturus albidus*), kaulu (*Sapindus Oahuensis*), hame (*Antidesma platyphyllum*), 'āla'a (*Pouteria sandwicensis*), 'a'ali'i (*Dodonaea viscosa*), naupaka kuahiwi (*Scaevola* spp.), pūkiawe (*Styphelia*

tameiameiae), uluhe (*Dicranopteris linearis*), guava (*Psidium guajava*), strawberry guava (*P. cattleianum*), mango (*Mangifera indica*), kukui (*Aleurites moluccana*), christmasberry (*Schinus terebinthifolius*), ti (*Cordyline terminalis*), rose apple (*Syzygium jambos*), mountain apple (*S. malaccense*), and Java plum (*S. cumini*).

3. Existing developed features and structures, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas that do not contain one or more of the primary constituent elements, are not included as critical habitat.

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Unit 1 (4,502 ha; 11,122 ac)

Unit 1 consists of one hundred and one boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 588465, 2375750; 587846, 2376228; 587213, 2376416; 586946, 2376176; 586675, 2376658; 586672, 2377028; 586468, 2377154; 586672, 2377219; 586430, 2377462; 586532, 2377741; 586464, 2377863; 586261, 2377727; 585895, 2377915; 585242, 2377801; 584907, 2377864; 584433, 2377671; 584139,

2377961; 583974, 2378388; 584099, 2378414; 584016, 2378599; 584207, 2378563; 583425, 2379849; 583801, 2379814; 583831, 2380171; 584075, 2380122; 584324, 2379841; 584526, 2380031; 584181, 2381150; 584078, 2381295; 583938, 2381385; 583738, 2381388; 583402, 2381505; 583315, 2381668; 582998, 2381518; 582785, 2381368; 582566, 2381369; 582561, 2381485; 582694, 2381702; 582685, 2381865; 582566, 2382005; 582651, 2382112; 583122, 2382432; 582768, 2382529; 582445, 2382889; 581998, 2383075; 581881, 2383019; 581546, 2383276; 581387, 2383071; 581221,

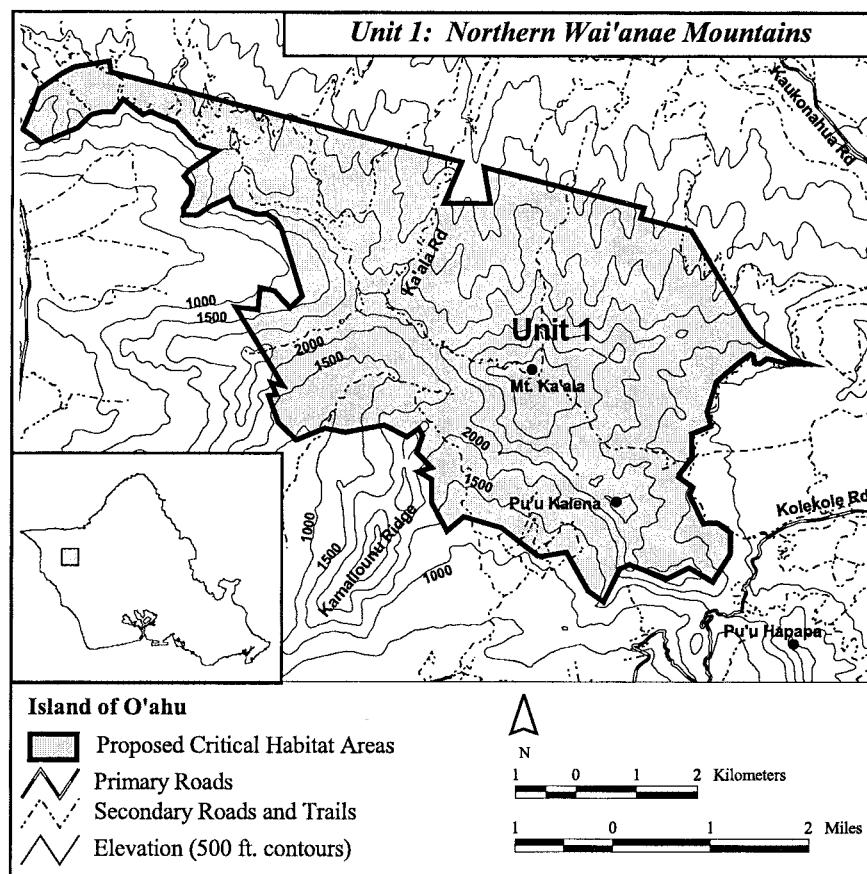
2383069; 581023, 2383019; 580811, 2382809; 580192, 2382557; 580070, 2382662; 579894, 2382772; 580060, 2383144; 580151, 2383425; 580526, 2383690; 580750, 2383802; 581314, 2383901; 581353, 2383719; 587168, 2382252; 586876, 2381574; 587645, 2381564; 587539, 2382159; 590187, 2381495; 590131, 2381324; 590955, 2381123; 591938, 2379504; 592106, 2379316; 592575, 2379032; 592871, 2378937; 592520, 2378940; 592213, 2379019; 592100, 2378936; 592014, 2378940; 591993, 2379074; 591950, 2379089; 591765, 2378955; 591393, 2378631; 591229, 2378138; 591294,

2377905; 590979, 2377773; 590984,
2377387; 590770, 2377109; 590760,
2377063; 590999, 2376896; 590945,
2376772; 591176, 2376297; 591268,

2376320; 591426, 2376305; 591624,
2376158; 591620, 2375793; 591334,
2375340; 590950, 2375570; 590580,
2375400; 589956, 2375632; 589799,

2375555; 589539, 2375014; 589285,
2375190; 588919, 2375824; 588465,
2375750.

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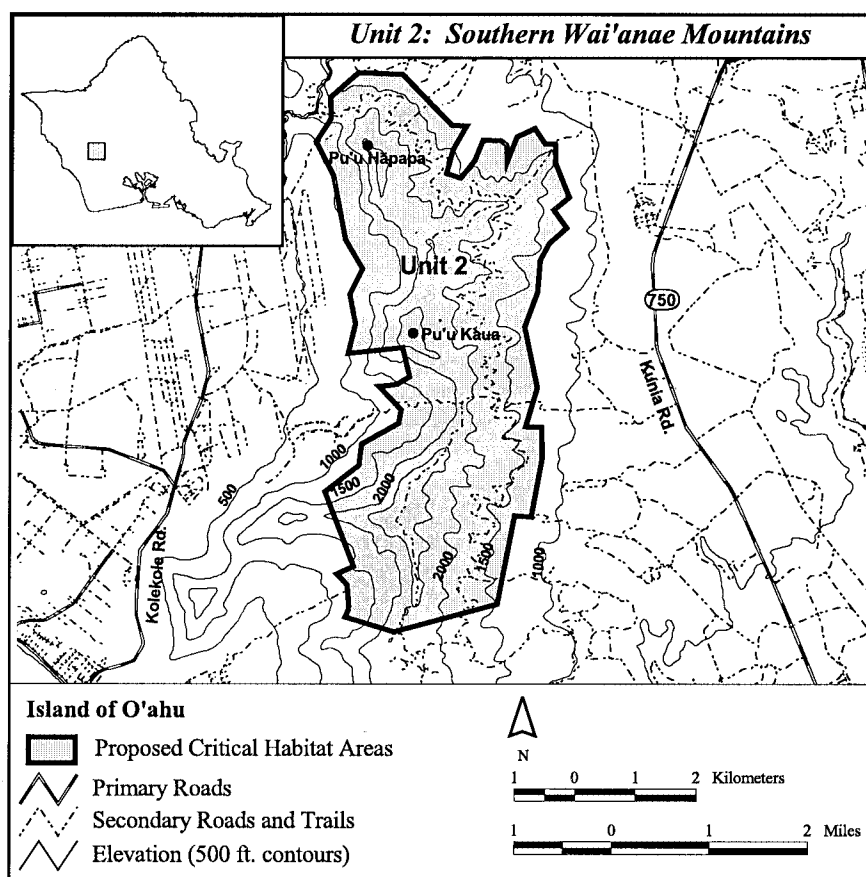
Unit 2 (2,515 ha; 6,215 ac)

Unit 2 consists of fifty-six boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 592373, 2366709; 592345, 2367091; 592171, 2367271; 592449, 2367406; 591970, 2368628; 592530, 2369066; 592575, 2369415; 593190, 2369759; 593231, 2369971; 592864, 2370362; 593156, 2370385; 593368,

2370513; 593249, 2370991; 592348, 2370899; 592469, 2371381; 592374, 2371861; 592582, 2372284; 592295, 2372774; 592100, 2373836; 591816, 2374384; 592053, 2374764; 592045, 2375115; 592504, 2375529; 593245, 2375497; 594056, 2374659; 594299, 2374644; 594081, 2374253; 593970, 2373860; 594207, 2373793; 594437, 2374070; 594578, 2374412; 594867, 2374406; 594965, 2374331; 594978, 2374067; 595140, 2374463; 595431, 2374602; 595604, 2374352; 595772,

2374351; 595782, 2374020; 596005, 2373471; 595754, 2373256; 595960, 2372960; 595678, 2372709; 595531, 2372434; 595485, 2371908; 595272, 2371337; 595489, 2370340; 595296, 2369703; 595561, 2369694; 595565, 2369178; 595390, 2368213; 595117, 2368245; 594830, 2366778; 593114, 2366319; 592309, 2366563; 592373, 2366709.

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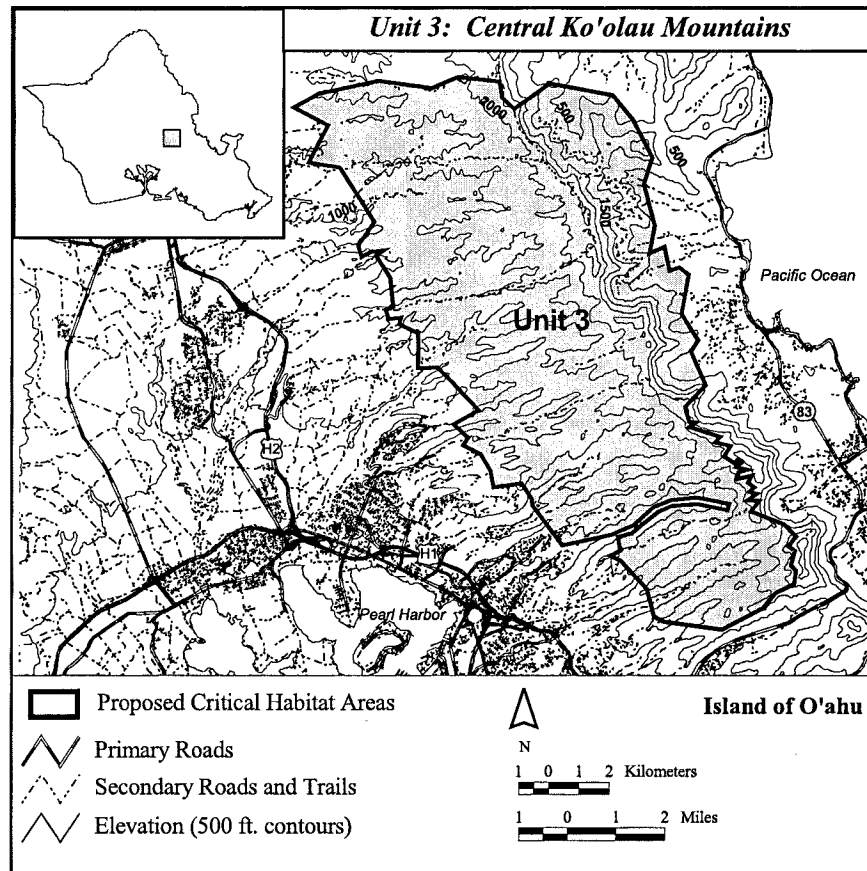
Unit 3 (14,840 ha; 36,669 ac)

Unit 3 consists of one hundred and six boundary points with following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 615481, 2366443; 613829, 2366084; 612845, 2367394; 612829, 2367639; 612488, 2368140; 611561, 2368027; 611448, 2368566; 611117, 2369088; 610523, 2369387; 610693, 2369643; 610226, 2370083; 611040, 2370565; 609681, 2371985; 609025, 2371951; 609034, 2373100; 608391, 2373401; 608469, 2373609; 608065, 2373567; 607941, 2373859; 608199, 2373978; 608109, 2374925; 607637, 2375635; 607869, 2375817; 607456, 2375780; 607136, 2375598; 607046, 2375977; 607565,

2376766; 606428, 2378568; 605381, 2378725; 606026, 2379972; 604900, 2380551; 605708, 2381032; 607698, 2381439; 609468, 2381214; 610319, 2381573; 611728, 2381425; 611797, 2380904; 612201, 2380506; 613364, 2381362; 615459, 2380980; 616152, 2380161; 616780, 2378903; 616513, 2378013; 616873, 2376632; 616699, 2375737; 617180, 2375933; 617356, 2375158; 617664, 2375259; 617994, 2375029; 617757, 2373739; 618311, 2372859; 618082, 2372506; 618563, 2371385; 617894, 2370668; 618022, 2370181; 618247, 2370148; 618043, 2370014; 619043, 2369685; 618878, 2369509; 619381, 2369376; 619182, 2369040; 619525, 2368805; 619611, 2368922; 619747, 2368829; 619588, 2368664; 619928, 2368585; 619650, 2368496; 619614, 2368284; 620097,

2368401; 619967, 2368174; 620164, 2368022; 620005, 2367870; 620257, 2367795; 619954, 2367590; 620341, 2367572; 620055, 2367214; 621150, 2366779; 621549, 2366388; 621302, 2366064; 621511, 2365913; 621381, 2365424; 621553, 2365265; 621489, 2364827; 620880, 2364530; 620469, 2364040; 619115, 2363338; 617176, 2363590; 616868, 2363761; 616638, 2364642; 615913, 2365439; 615777, 2365575; 615420, 2365753; 615767, 2365918; 615684, 2366361; 616156, 2366495; 616990, 2367187; 617469, 2367398; 618312, 2367466; 619282, 2367250; 619336, 2367460; 618293, 2367672; 617426, 2367594; 616876, 2367352; 616189, 2366748; 615713, 2366555; 615481, 2366443.

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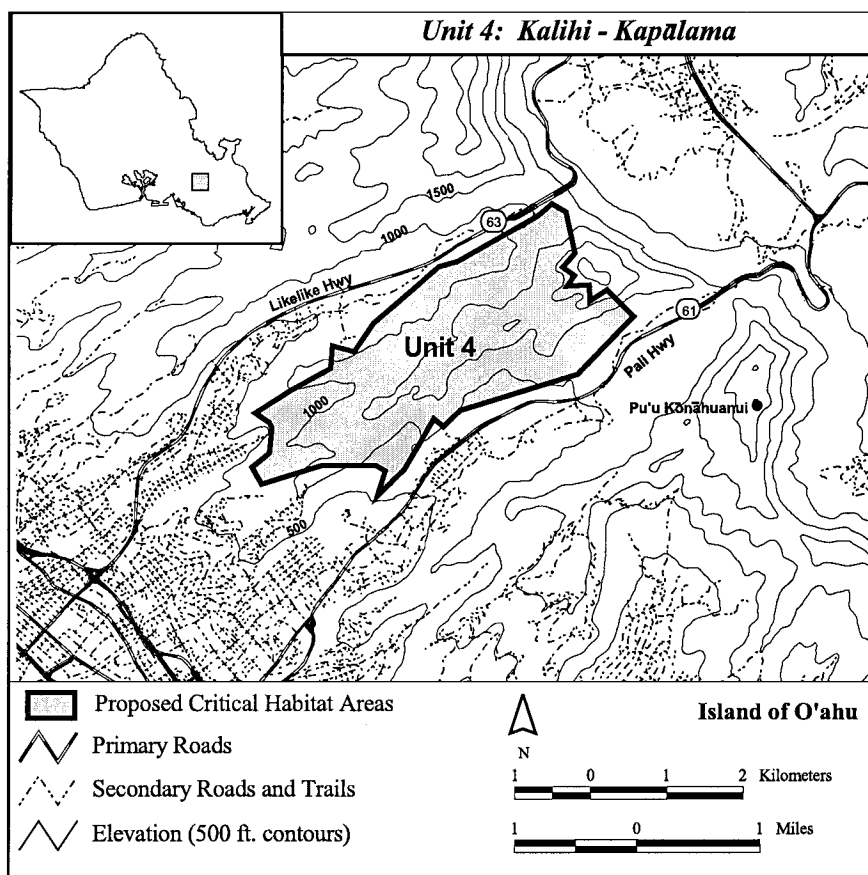
Unit 4 (800 ha; 1,977 ac)

Unit 4 consists of thirty-five boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 619449, 2361897; 619967, 2362184; 619999, 2362473; 620286,

2362404; 620537, 2362773; 621409, 2363520; 621660, 2363584; 622719, 2364191; 622901, 2364348; 623091, 2364242; 623209, 2363699; 623046, 2363507; 623201, 2363403; 623106, 2363264; 623391, 2363271; 623404, 2363073; 623634, 2363216; 623976, 2362864; 623238, 2362105; 621688, 2361633; 621467, 2361418; 621345,

2361518; 620954, 2360860; 620598, 2360514; 620700, 2360831; 620572, 2360908; 619869, 2360908; 619670, 2360852; 619064, 2360661; 618935, 2360886; 619170, 2361072; 619199, 2361402; 619163, 2361470; 618977, 2361595; 619449, 2361897.

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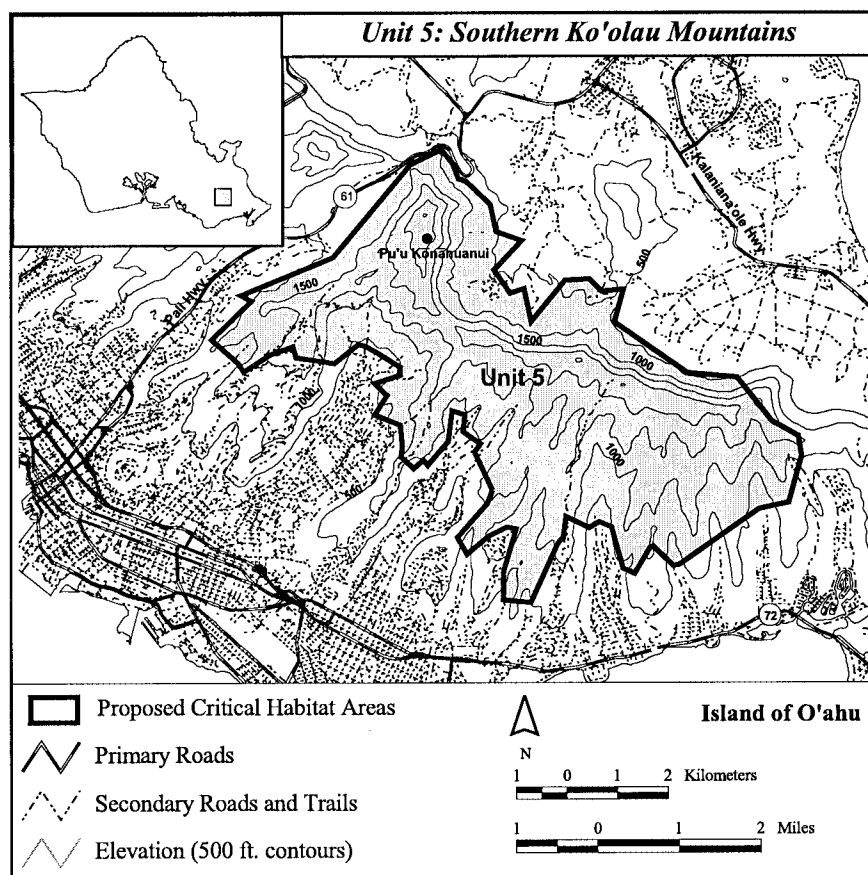
Unit 5 (4,197 ha; 10,371 ac)

Unit 5 consists of seventy-eight boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 626915, 2356759; 626560, 2357502; 626675, 2357669; 626333, 2357906; 626359, 2358234; 626110, 2358313; 626031, 2357725; 625623, 2357254; 625538, 2357354; 625351, 2357186; 625091, 2357420; 625118, 2357617; 625085, 2358039; 624568, 2358236; 624821, 2358624; 624568, 2358859; 625059,

2359019; 625083, 2359182; 624607, 2359469; 624378, 2359605; 624247, 2359627; 623768, 2359261; 623004, 2359366; 622941, 2359584; 622499, 2359435; 621968, 2359088; 621864, 2359256; 621335, 2359722; 622127, 2360488; 621920, 2360603; 623746, 2361359; 625281, 2363179; 625896, 2363475; 626109, 2363219; 626146, 2363135; 626234, 2362910; 626392, 2362857; 626871, 2362399; 626986, 2361859; 627500, 2361686; 626946, 2361095; 627268, 2360638; 627548, 2360727; 627690, 2360077; 628361, 2360895; 628839, 2360922; 629079, 2360676; 629519, 2360722; 629341,

2360070; 630776, 2359069; 631754, 2358982; 632440, 2358108; 632959, 2357815; 633019, 2357425; 632769, 2356517; 632191, 2356385; 630620, 2355286; 630491, 2355266; 630104, 2355644; 630041, 2355624; 629732, 2355117; 629510, 2355214; 629279, 2356032; 629033, 2356130; 628836, 2356015; 628378, 2356236; 628317, 2355841; 628209, 2355703; 627673, 2354542; 627125, 2354591; 627125, 2355143; 627381, 2355990; 627200, 2356033; 626832, 2355846; 626399, 2355498; 626215, 2355823; 626806, 2356493; 626915, 2356759.

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Dated: May 30, 2001.

Marshall P. Jones Jr.,
Acting Assistant Secretary for Fish and
Wildlife and Parks.

(Proposed: Designation of critical
habitat for the O'ahu 'elepaio
(*Chasiempis sandwichensis ibidis*))
[FR Doc. 01-14171 Filed 6-5-01; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 053001D]

Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska, King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, Scallop and Salmon Fisheries off the Coast of Alaska

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

ACTION: Notice of intent to prepare a
supplemental environmental impact

statement (SEIS); request for written
comments; notice of scoping meetings.

SUMMARY: NMFS announces its intent to
prepare an SEIS in accordance with the
National Environmental Policy Act of
1969 (NEPA) for the essential fish
habitat (EFH) components of the
following fishery management plans
(FMPs): Groundfish Fishery of the
Bering Sea and Aleutian Islands Area;
Groundfish of the Gulf of Alaska; Bering
Sea/Aleutian Islands King and Tanner
Crabs; Scallop Fishery Off Alaska; and
Salmon Fisheries in the EEZ Off the
Coast of Alaska. The proposed action to
be addressed in the SEIS is the
development of the mandatory EFH
provisions of the FMPs. The scope of
the analysis will address the required
EFH components of the FMPs as
described in section 303(a)(7) of the
Magnuson-Stevens Fishery
Conservation and Management Act
(Magnuson-Stevens Act). NMFS will
hold public scoping meetings and
accept written comments to determine
the issues of concern and the
appropriate range of management
alternatives to be addressed in the SEIS
to describe and identify EFH and
potential Habitat Area of Particular
Concern (HAPC) designations, to
minimize to the extent practicable the

adverse effects of fishing on EFH, and to
identify other actions to encourage the
conservation and enhancement of EFH.

DATES: Written comments will be
accepted through July 21, 2001. The first
public scoping meeting will be held on
Monday, June 4, 2001, in Kodiak, AK.
See **SUPPLEMENTARY INFORMATION** for
dates, times, and locations of additional
public scoping meetings.

ADDRESSES: Written comments should
be sent to P. Michael Payne, Assistant
Regional Administrator, Alaska Region,
NMFS, P.O. Box 21668, Juneau, AK
99802. Comments may be sent via
facsimile (fax) to (907) 586-7012. NMFS
will not accept comments by e-mail or
Internet. See **SUPPLEMENTARY
INFORMATION** for dates, times, and
locations of public scoping meetings.

FOR FURTHER INFORMATION CONTACT:
Cindy Hartmann, EFH Coordinator,
Juneau, AK, (907) 586-7235.

SUPPLEMENTARY INFORMATION:
Amendments to the Magnuson-Stevens
Act in 1996 set forth new mandates for
NMFS and Regional Fishery
Management Councils (Regional
Councils) to identify and protect
important marine and anadromous fish
habitat. The Regional Councils, with

assistance from NMFS, were required to delineate EFH for all managed species. EFH is defined in the Magnuson-Stevens Act as "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." In response to the amended Magnuson-Stevens Act and based on guidelines for the EFH contents of FMPs (50 CFR part 600 subpart J), the North Pacific Fishery Management Council (Council) completed preparation of the following five EFH FMP amendments in 1998: Amendment 55 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Amendment 55 to the FMP for Groundfish of the Gulf of Alaska; Amendment 8 to the FMP for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands; Amendment 5 to the FMP for Scallop Fisheries Off Alaska; and Amendment 5 to the FMP for the Salmon Fisheries in the EEZ Off the Coast of Alaska (Amendments 55/55/8/5/5). These EFH FMP amendments were reviewed and approved by the Secretary of Commerce and took effect on January 20, 1999 (64 FR 20216). These FMP amendments identified EFH for over 130 managed species.

In June 1999, several environmental and fishing groups challenged the scope and substance of the environmental assessment (EA) prepared for Amendments 55/55/8/5/5 (*American Oceans Campaign et al. v. Daley*, Civ. No. 99-982 (D.D.C.)). On September 14, 2000, the U.S. District Court issued an opinion finding the EA insufficient in scope and analytical substance and requiring NMFS to prepare an analysis that is legally sufficient under NEPA. Therefore, NMFS is re-evaluating the EFH components originally developed as part of Amendments 55/55/8/5/5. The SEIS will supersede the EA previously prepared in support of Amendments 55/55/8/5/5.

The proposed action to be addressed in the SEIS is the development of the mandatory EFH provisions of the affected FMPs as described in section 303(a)(7) of the Magnuson-Stevens Act and based on the guidance in 50 CFR part 600 subpart J. The following three types of actions will be specifically analyzed: (1) Identify and describe EFH for managed species; (2) identify HAPCs within EFH; and (3) minimize, to the extent practicable, adverse effects on EFH caused by fishing. The scope of the new SEIS will cover all of the required EFH components of FMPs. NMFS will consider the need to revise the previously approved EFH provisions of these FMPs based on any available new

scientific information, and the revised analysis of EFH alternatives.

The EA prepared for Amendments 55/55/8/5/5 covered all five FMPs. For this new NEPA analysis, a single SEIS may be prepared that analyzes the required EFH components for all five FMPs or multiple SEISs may be prepared that analyze the required EFH components for individual FMPs.

Alternatives

NMFS will evaluate a range of alternatives for developing mandatory EFH provisions for the Council's five FMPs. NMFS is seeking information from the public through the scoping process on the range of alternatives to be analyzed and on the environmental, social, and economic issues to consider in the analysis. Alternatives will be developed based on significant issues raised during the scoping process.

Alternatives for Designation of EFH

Alternatives for the designation of EFH may include those identified in the EA for Amendments 55/55/8/5/5, plus additional alternatives. Alternatives already identified include: (1) No action (no designation of EFH); (2) EFH is all habitat within a general distribution for a species life stage; and (3) EFH is a subset of all habitat within a general distribution, e.g., areas of known concentration. Other possible EFH alternatives could include a habitat-based approach, a core habitat approach (comparable to critical habitat for endangered species), and an ecosystem approach that may address prey and reproductive associations.

Alternatives for Designation of HAPCs

HAPCs are subsets of EFH. HAPCs are those areas of special importance that may require additional protection from adverse effects. HAPCs are defined on the basis of the ecological importance, sensitivity to human-induced environmental degradation, stress to the habitat from development activities, and rarity of the habitat. Amendments 55/55/8/5/5 identified 3 types of habitat as HAPCs (living substrates in shallow water, living substrates in deep waters, and freshwater areas used by anadromous fish) but did not map or designate specific areas as HAPCs. In August 1998, the Council received 6 proposals concerning HAPCs. The proposals included the following: (1) Identifying where living substrate in shallow water and deep water occur in the BSAI and GOA; (2) adding seamounts/pinnacles, ice edge, shelf break, and biologically consolidated fine-grained sediments as types of HAPC; (3) developing a procedure to

assess potential adverse impacts to HAPCs; (4) nominating Prince William Sound black hole, Chirikov Basin, and Kodiak red king crab areas as HAPCs; (5) protecting important habitat for *C. bairdi* crab by establishing a no-fishing zone in a specified area of the Bering Sea; and (6) establishing the Kodiak red king crab areas as an HAPC. These proposals and/or others may be investigated as part of the EFH SEIS.

An HAPC EA prepared by Council staff in 2000 considered protection measures for corals and sponges. Specific areas were proposed for protection and stakeholder meetings were held. Currently, no specific actions from these meetings are being evaluated. An HAPC alternative to protect corals and sponges is possible in the SEIS.

Alternatives for Effects of Fishing on EFH

The alternatives analysis will identify a range of approaches that could be taken to minimize any potential adverse effects of fishing on EFH. The range of alternatives may include measures such as banning specific gear types, closing areas to fishing, rotational closure areas, protected areas or other measures. A no-action alternative will be included as an alternative. The range of alternatives will be developed based on comments NMFS receives during the scoping process.

Public Involvement

NMFS will work with the Council throughout the development of the SEIS. The Council has formed an EFH Oversight Committee that will help keep the Council an integral part of the NEPA process for EFH. Council staff will assist in the development of the SEIS. The public will be able to provide oral and written comments on EFH at Council meetings.

A principal objective of the scoping and public involvement process is to identify a reasonable range of management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for both distinguishing between those alternatives and selecting a preferred alternative. NMFS is seeking written comments on the scope of issues that should be addressed in the SEIS. Also, NMFS invites specific comment on the appropriate extent of EFH and HAPCs for Council-managed species and on the scientific basis for EFH and HAPC designations. NMFS also solicits any new information related to the impacts of fishing and non-fishing activities on EFH and HAPCs for fishery resources managed under the Council's FMPs and possible management measures

designed to mitigate adverse fishing impacts.

Dates and Times for Public Scoping Meetings

The public is invited to assist NMFS and the Council in developing the scope of alternatives to be analyzed. The first public scoping meeting will be held on: Monday, June 4, 2001, from 7-9 p.m., at the Fishery Industrial Technology Center, 118 Trident Way, Kodiak, AK.

Additional scoping meetings will be held in other communities as follows:

1. Friday, June 8, 2001, Unalaska, City Hall, Council Chambers, 245 Raven Way, 4 to 8 p.m., Unalaska, AK;

2. Monday, June 11, 2001, Anchorage, Z. J. Loussac Library, public conference room, level 1, 3600 Denali Street, 2:30 to 6:30 p.m., Anchorage, AK;

3. Tuesday, June 19, 2001, Seattle, Alaska Fisheries Science Center, room 2079, 7600 Sand Point Way NE, 1:30 to 5:30 p.m., Seattle, WA;

4. Wednesday, June 20, 2001, Juneau, Federal Building, room 445, 709 W. 9th Street, 2 to 5:30 p.m. and Centennial Hall Convention Center, Egan Room, 101 Egan Drive, 7 to 9 p.m., Juneau, AK; and

5. Thursday, June 21, 2001, Sitka, Harrigan Centennial Hall, Maksoutoff Room, 330 Harbor Drive, 2 to 5:30 and 7 to 9 p.m., Sitka, AK.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann (see **ADDRESSES**), (907) 586-7585, at least 5 days prior to the meeting date.

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

Dated: May 31, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-14258 Filed 6-1-01; 4:52 pm]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 66, No. 109

Wednesday, June 6, 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

Commodity Credit Corporation

Extension of the Comments Deadline on a Previously Published Notice

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is seeking approval from the Office of Management and Budget (OMB) for the information collection activities necessary to provide customers with an interactive web site they can use to track United States Department of Agriculture (USDA) domestic commodity shipments. The new procedure will be more reliable and more efficient than the current procedure. A notice was published on September 21, 2000 (Volume 65, Number 1841), requesting comments on this new web site. Inadvertently, the prototype was not ready for vendors to try at that time; therefore, we are requesting approval for an extension of the deadline for comments.

DATE: Comments on this notice must be received on or before August 6, 2001 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Gregory Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office (KCCO), 6501 Beacon Drive, Kansas City, Missouri 64131-4676, telephone (816) 926-6509 or fax (816) 926-6767.

SUPPLEMENTARY INFORMATION:

Title: Domestic Commodities Tracking Service (DCTS).

OMB Control Number: 0560-New.

Type of Request: Approval of a new information collection.

Abstract: The Commodity Credit Corporation (CCC) purchases agricultural commodities to meet program needs and other objectives.

CCC issues invitations to purchase agricultural commodities at various times during the year. Vendors respond by making offers on the contracts. After contracts are awarded, the current process of tracking shipments requires manual documentation with data gathering provided by telephone and facsimile. The Farm Service Agency (FSA), Kansas City Commodity Office (KCCO) has developed information technology to assist in tracking of shipments of transported agricultural commodities. The DCTS is a customer service endeavor which has emphasis on improved service to all customers and increased efficiency in the shipping/delivery operations. An interactive web site is designed to provide our customers with an efficient, user friendly method for inquiring on the status of shipments. Recipients and other agencies may utilize this service to determine if commodities have been purchased, the target delivery date, and date shipment was made. Accurate tracking will provide timely shipment information allowing recipients to effectively schedule their workforce. DCTS will reduce or eliminate: paperwork, document handling, mail and telephone time, postage, facsimile, and telephone expenses. The users will include: commodity vendors; transportation carriers; State Distributing Agencies; FSA; Traffic Management Branch, Agricultural Marketing Service; and the Food and Nutrition Service. The equipment required to access DCTS is a personal computer, an internet service provider, and an internet browser version 4.0 or higher. Vendors will submit shipment and late delivery data electronically versus the current process of sending hard copies.

Regulations governing paperwork burdens on the public require that before an agency collects information from the public, the agency must receive approval from the Office of Management and Budget (OMB). In accordance with those regulations, CCC is seeking approval for DCTS to provide for the tracking of shipments through the Internet. A prototype of this system is available on the internet for review at: <http://www.fsa.usda.gov/dcts>. Once the user obtains access to the internet, enter the following to access the DCTS prototype: LOGIN ID: testvendor, and PASSWORD: abcd12345. The user will

then click on Vendor Entry, highlighted in red. The user can enter his comments by clicking on the link, **Federal Register Comments**, highlighted in red, of the DCTS prototype.

Estimate of Burden: 3 minutes per response.

Respondents: Businesses and other for profit.

Estimated Number of Respondents: 67.

Estimated Number of Annual Responses per Respondent: 220.

Estimated Total Annual Burden on Respondents: 737 hours.

Proposed topics for comments include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection requirement should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Agriculture, Washington, DC 20503, and to Gregory Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133-4676, telephone (816) 926-6509 or fax (816) 926-1648. The user can enter his comments by clicking on the link, **Federal Register Comments**, highlighted in red, of the DCTS prototype.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on May 23, 2001.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01-14154 Filed 6-5-01; 8:45 am]

BILLING CODE 3410-05-U

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****Agricultural Management Assistance**

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Notice of availability of program funds for agricultural management assistance.

SUMMARY: This notice announces the availability of funds for Agricultural Management Assistance (AMA) to implement Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), as added by Section 133 of the Agricultural Risk Protection Act of 2000, Public Law 106-224. The Commodity Credit Corporation (CCC) administers the funds under the general supervision of a Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS). CCC is announcing the availability of funds under Section 524(b) of the Federal Crop Insurance Act. Section 524(b) authorizes the Secretary of Agriculture to use \$10 million of CCC funds annually for cost share assistance to producers in 15 States in which participation in the Federal Crop Insurance Program is historically low. The 15 States include Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The cost share assistance will encourage and assist producers in the selected States to adopt natural resources conservation practices and investment strategies that will reduce or mitigate risks to their agricultural enterprises.

DATES: Fund will be available from June 6, 2001 to September 30, 2001.

ADDRESSES: Address all comments to: Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, or Gary Gross, AMA Program Manager, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013, (202) 720-1845, fax: 202-720-4265; Submit electronic comments to: mark.berkland@usda.gov or gary.gross@usda.gov.

SUPPLEMENTARY INFORMATION:**Background**

Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), was

added by Section 133 of the Agricultural Risk Protection Act of 2000, (Pub. L. 106-224, June 22, 2000). Section 524(b) authorizes the Secretary of Agriculture (Secretary) to use \$10 million of CCC funds for cost share assistance in 15 States where participation in the Federal Crop Insurance program is historically low. The 15 States designated by the Secretary are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The Risk Management Agency (RMA), Agricultural Marketing Service (AMS), and NRCS will administer the funds in such amounts per agency as determined by the Secretary.

Section 524(b)(2)(A), (B), and (C), provides for cost-share assistance to producers to: construct or improve water management structures or irrigation structures; plant trees for windbreaks or improve water quality; and mitigate risks through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming.

Section 524(b)(2)(D) and (E), provides for cost-share assistance to producers to: enter into futures, hedging, or options contracts in a manner designed to help reduce production, price, or revenue risk; and enter into agricultural trade options as a hedging transaction to reduce production, price, or revenue risk.

This notice deals with the funding administered by NRCS, approximately \$6 million, to carry out the conservation provisions of Section 524(b)(2)(A), (B), and (C).

The Chief of NRCS, on behalf of CCC, will determine the funds available to the States for financial and technical assistance in a fiscal year.

The NRCS State Conservationist, in consultation with the State Technical Committee, will determine eligible practices using a locally led process. Eligible conservation practices will be those practices that improve soil or water management or water quality, or mitigate financial risk through resource conservation. AMA does not provide for incentive payments.

There will be a continuous signup period, with ranking cutoff dates as determined by the State Conservationist in consultation with the State Technical Committee.

The State Conservationist, in consultation with the State Technical Committee, will select applications based on State-developed ranking criteria and a ranking process, taking

into account local and state priorities. The State Conservationist may also delegate the selection of applications to the local designated conservationist who will work in consultation with the local USDA Work Group.

AMA Requirements

CCC will accept applications throughout the year. The State Conservationist, in consultation with the State Technical Committee, will widely distribute information on the availability of assistance and the State-specific goals. Information will be provided that explains the process to request assistance.

Applicants must own or control the land for which assistance is being sought and agree to implement specific eligible conservation practices on the land. The applicants must meet the definition of "person" as set out in Section 1001(5), of the Food Security Act, 7 U.S.C. 1308(5), as determined by the Farm Service Agency (FSA). Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment. The status of an individual or entity on the date of the application shall be the basis on which the determination of the number of persons involved in the farming operation is made. There will be a 5 to 10 year cost share agreement period to install eligible practices. Cost share practices need to be maintained for the life of the practice. The maximum payment to any one person under the AMA program is \$50,000 for any fiscal year.

The Federal share of cost-share payments shall be 75 percent of the cost of an eligible practice(s), based on percent of actual cost, percent of actual cost with not-to-exceed limits, flat rates, or average costs. Producers will be paid upon certification of the completion of the approved practice(s). Producers may contribute to the application of a cost-share practice through in-kind contributions. Eligible in-kind contributions include: personal labor; use of personal equipment; donated labor or materials; and use of on-hand or used materials that meet the requirements for the practice to be installed. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice. Cost-share payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the cost share agreement.

Eligible participants must have control of the land for the life of the cost share agreement period. An exception may be made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief of NRCS determines that there is sufficient assurance of control; or the applicant is a tenant of the land involved in agricultural production and the applicant provides CCC with the written concurrence of the landowner in order to apply an eligible practice(s).

Eligible land includes land used as agricultural land on which NRCS determines that assistance is needed to construct or improve watershed management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; or to mitigate financial risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming. Additionally, land may only be considered for enrollment in AMA if NRCS determines that the land is privately-owned or publicly-owned where the land is under private control for the length of the cost share agreement and is included in the participant's operating unit. The conservation practices installed on public land must contribute to an improvement in the identified natural resource concern as well as benefit private land. The applicant must provide CCC with written authorization from the government landowner to apply the conservation practices. Land that is Federally recognized Tribal, BIA allotted, or Indian trust land may be considered for enrollment in AMA.

Applicants must submit an application (CCC-1200 form) to CCC to be considered for participation in AMA. Any producer who has eligible land may obtain and submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation. A NRCS conservationist will work with the applicant to collect the information necessary to evaluate the application using the State-developed ranking criteria.

Conservation Plan Requirement

A conservation plan is required for the area to be included in the AMA cost share agreement and becomes the basis for developing the cost share agreement. The conservation plan must be acceptable to NRCS; be approved by the local conservation district; be signed by the participant, designated

conservationist, and the conservation district; and clearly identify the conservation practices that will be cost shared with AMA funds and the non-cost shared practices needed in the conservation plan.

Cost Share Agreement Requirements

Participants will enter into a cost share agreement agreeing to implement eligible conservation practices. An AMA cost share agreement will incorporate by reference all portions of a unit applicable to AMA and be for a duration of 5 to 10 years.

Cost share agreements will incorporate all provisions as required by law or statute, including requirements to not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the cost share agreement; refund to CCC any AMA payments received with interest, and forfeit any future payments under AMA, on the violation of a term or condition of the cost share agreement; refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the cost share agreement, unless the transferee of the right and interest agrees to assume all obligations of the cost share agreement; and supply information as required by CCC to determine compliance with the cost share agreement and requirements of AMA. The participant and NRCS must certify that a conservation practice is completed in accordance with the cost share agreement before CCC will approve any cost-share payments.

With respect to land under an AMA cost share agreement which is inherited during the cost share agreement period, the \$50,000 per fiscal year limitation to any person will not apply to the extent that the payments from any cost share agreements on the inherited land cause an heir, who was party to an AMA cost share agreement on other lands prior to the inheritance, to exceed the annual limit.

With regard to cost share agreements on tribal land, Indian trust land, or BIA allotted land, payments exceeding \$50,000 per fiscal year limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the fiscal year limitation.

Conservation Practice Operation and Maintenance

The cost share agreement will provide for the operation and maintenance of the conservation practices applied under the cost share agreement. The participant will operate and maintain

the conservation practices for their intended purposes as agreed-to as part of the cost share agreement, and form CCC-1245, Practice Approval and Payment Application.

Additional Requirements and Information

Additional requirements and information pertaining to the AMA program relating to cost share agreements, administrative requirements, and other matters can be found on CCC form CCC-1200, Conservation Program Contract, and the appendix to form CCC-1200, both of which are available at local USDA service centers.

Civil Rights

NRCS and CCC have collected civil rights data on farmers/ranchers participating in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits in NRCS or CCC assisted programs.

Environmental Evaluation

This assistance, administered by NRCS, will be funded at a level for 2001 as determined by the Secretary. Depending on the level of funding, and based on the participation in existing soil and water conservation programs, it is estimated that this assistance could result in approximately 200 cost share agreements in the 15 States. On each farm or ranch, during the conservation planning process, the environmental effects of any proposed actions are evaluated on a case by case basis. That evaluation is used to determine whether further environmental analysis is required. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared for this notice.

Signed in Washington, DC, on May 23, 2001.

Thomas A. Weber,

Deputy Chief for Programs, Natural Resources Conservation Service.

[FR Doc. 01-14151 Filed 6-5-01; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****Soil and Water Conservation Assistance**

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Availability of Program Funds for Soil and Water Conservation Assistance.

SUMMARY: This notice announces the availability of funds for Soil and Water Conservation Assistance (SWCA) to implement Section 211(b), Title II, of the Agricultural Risk Protection Act of 2000 Public Law 106-224. The Commodity Credit Corporation (CCC) administers the funds under the general supervision of a Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS). Section 211(b) authorizes the Secretary of Agriculture to use the funds for soil, water, and related natural resources conservation purposes in areas that have not been designated as conservation priority areas under section 1230(c) of the Food Security Act of 1985 (16 U.S.C. 3830(c)).

DATES: Funds will be available from June 6, 2001 to September 30, 2001, unless they are obligated sooner.

ADDRESSES: Address all comments to: Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, or Gary Gross, SWCA Program Manager, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013, (202) 720-1845, fax: 202-720-4265. Submit electronic comments to: mark.berkland@usda.gov or gary.gross@usda.gov.

SUPPLEMENTARY INFORMATION:**Background**

Section 211(b), Title II, of the Agricultural Risk Protection Act of 2000, (Pub. L. 106-224, June 22, 2000), 16 U.S.C. 3830 note, authorizes the Secretary of Agriculture (Secretary) to use funds of CCC to provide financial assistance to farmers and ranchers to address threats to soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat; comply with Federal and State environmental laws; and make beneficial, cost-effective changes to cropping systems, grazing management, manure, nutrient, pest, or irrigation management, land uses, or other

measures needed to conserve and improve soil, water, and related natural resources. Assistance under this section may be made in the form of cost-share payments or incentive payments, as determined by the Secretary. A total of \$20 million is being made available for Section 211(b) in fiscal year 2001.

Section 211(b) authorizes the Secretary of Agriculture to use the funds to provide assistance in areas that are not designated as conservation priority areas under section 1230(c) of the Food Security Act of 1985 (16 U.S.C. 3830(c)). These are areas that are outside of designated priority areas of the Conservation Reserve Program, Environmental Quality Incentives Program, and the Wetlands Reserve Program.

The Chief of NRCS, on behalf of CCC, will determine the funds available to the States for financial and technical assistance.

The NRCS State Conservationist, in consultation with the State Technical Committee (established under 16 U.S.C. 3861), will determine eligible practices using a locally led process. Eligible conservation practices will be those practices that meet the provisions of Section 211(b), as previously outlined.

There will be a continuous signup period, with ranking cutoff dates as determined by the State Conservationist in consultation with the State Technical Committee.

The State Conservationist, in consultation with the State Technical Committee, will select applications based on State-developed ranking criteria and a ranking process, that takes into account local and state priorities. The State Conservationist may also delegate the selection of applications to a local designated conservationist who will work in consultation with the local USDA Work Group.

SWCA Requirements

CCC will accept applications throughout the year. The State Conservationist, working with cooperating agencies and organizations, will distribute information on the availability of assistance and the State-specific goals. Information will be provided that explains the process to request assistance.

Applicants must own or control the land for which assistance is being sought and agree to implement specific eligible conservation practices on the land. There will be a 5 to 10 year cost-share agreement period to install eligible practices. Cost-share practices need to be maintained for the life of the practice. The maximum payment to any one participant under SWCA is \$50,000.

The Federal share of cost-share payments will be 75 percent of the cost of an eligible practice(s) based on percent of actual cost, percent of actual cost with not-to-exceed limits, flat rates, or average costs as determined by the State Conservationist. Producers will be paid upon certification of completion of the approved practice(s). Producers may contribute to the application of a cost-share practice through in-kind contributions. Eligible in-kind contributions include: personal labor; use of personal equipment; donated labor or materials; and use of on-hand or approved used materials that meet the requirements for the practice to be installed. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice. Cost-share or incentive payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the cost-share agreement.

Eligible participants must have control of the land for the life of the cost share agreement period. An exception may be made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief of NRCS determines that there is sufficient assurance of control; or the applicant is a tenant of the land involved in agricultural production and the applicant provides CCC with the written concurrence of the landowner in order to apply an eligible practice(s).

Eligible land includes land used as agricultural land on which NRCS determines that assistance is needed to address threats to soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat; comply with Federal and State environmental laws; and make beneficial, cost-effective changes to cropping systems, grazing management, manure, nutrient, pest, or irrigation management, land uses, or other measures needed to conserve and improve soil, water, and related natural resources. Additionally, land may only be considered for enrollment in SWCA if NRCS determines that the land is privately-owned, or if publicly-owned, where the land is under private control for the length of the cost-share agreement and is included in the participant's operating unit. The conservation practices installed on public land must contribute to an improvement in the identified natural resource concern as well as benefit private land. The applicant must provide CCC with written authorization

from the government landowner to apply the conservation practices. Land that is federally recognized Tribal, BIA allotted, or Indian trust land may be considered for enrollment in SWCA.

Applicants must submit an application (CCC—1200 form) to CCC to be considered for participation in SWCA. Any producer who has eligible land may obtain and submit an application for participation in SWCA at an USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation. A NRCS conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria.

Conservation Plan Requirement

A conservation plan is required for the area to be included in the SWCA cost-share agreement and becomes the basis for developing the cost share agreement. The conservation plan must be acceptable to NRCS; be approved by the local conservation district; be signed by the participant, designated conservationist, and the conservation district; and clearly identify the conservation practices that will be cost shared with SWCA funds and the non-cost-shared practices needed in the conservation plan.

Cost-Share Agreement Requirements

Participants will enter into a cost-share agreement to implement eligible conservation practices. A SWCA cost share agreement will cover, as a minimum, the eligible land that influences, or is influenced by, the conservation practices being installed, and be for a duration of 5 to 10 years.

Cost-share agreements will incorporate all provisions as required by law or statute, including requirements to not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the cost-share agreement; refund to CCC any SWCA payments received, with interest, and forfeit any future payments under SWCA on the violation of a term or condition of the cost-share agreement; refund all SWCA payments received on the transfer of the right and interest of the producer in land subject to the cost-share agreement, unless the transferee of the right and interest agrees to assume all obligations of the cost-share agreement; and supply information as required by CCC to determine compliance with the cost-share agreement and requirements of SWCA. The participant and NRCS must certify that a conservation practice is completed in accordance with the cost-

share agreement before CCC will approve any cost-share payments.

With respect to land under a SWCA cost-share agreement which is inherited during the cost share agreement period, the \$50,000 limitation per participant will not apply to the extent that the payments from any cost-share agreements on the inherited land cause an heir, who was party to a SWCA cost-share agreement on other lands prior to the inheritance, to exceed the limit.

With regard to cost-share agreements on tribal land, Indian trust land, or BIA allotted land, payments exceeding the \$50,000 limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one participant directly or indirectly will receive more than the limitation.

Conservation Practice Operation and Maintenance

The cost-share agreement will provide for the operation and maintenance of the conservation practices applied under the cost-share agreement. The participant will operate and maintain the conservation practices for their intended purposes as agreed-to as part of the cost-share agreement, and form CCC—1245, Practice Approval and Payment Application.

Additional Requirements and Information

Additional requirements and information pertaining to SWCA cost-share agreements, administrative requirements, and other matters can be found on form CCC—1200, Conservation Program Contract, and the appendix to form CCC—1200, both of which are available at local USDA service centers.

Civil Rights

NRCS and CCC have collected civil rights data on farmers/ranchers participating in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits in NRCS or CCC assisted programs.

Environmental Evaluation

This assistance, administered by NRCS, will be funded at a level for 2001 as determined by the Secretary. Depending on the level of funding, and based on the participation in existing soil and water conservation programs, it is estimated that this assistance could result in approximately 1000 cost-share agreements. On each farm or ranch,

during the conservation planning process, the environmental effects of any proposed actions are evaluated on a case-by-case basis. That evaluation is used to determine whether further environmental analysis is required. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared for this notice.

Signed in Washington, D.C., on, May 23, 2001.

Thomas A. Weber,

Deputy Chief for Programs, Natural Resources Conservation Service.

[FR Doc. 01-14150 Filed 6-5-01; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Public Meetings of Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meetings.

SUMMARY: The Farm Service Agency (FSA) is issuing this notice to advise the public that meetings of the Advisory Committee on Beginning Farmers and Ranchers (Committee) will be held to discuss the Secretary's responses to recommendations drafted at previous meetings and to formulate additional recommendations.

DATES: The public meetings will be held June 19–20, 2001, from 8:30 a.m. to 5:00 p.m. at the Radisson Barcelo Hotel Washington, 2121 P Street NW., Washington, DC, telephone 202-293-3100. All times noted are Eastern Standard Time (EST).

ADDRESSES: Mark Falcone, Designated Federal Official for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5438-S, STOP 0522, Washington, DC 20250-0522; telephone (202) 720-1632; FAX (202) 690-1117; e-mail mark_falcone@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT:

Mark Falcone at (202) 720-1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102-554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on the following: (1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers required by section 309(i) of

the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

Departmental Regulation 1042-119 dated November 25, 1998, formally established the Committee and designated FSA to provide support. The Committee meets at least once a year and all meetings are open to the public. The duration of the Committee is indefinite.

The initial meetings of the Committee, held August 31-September 2, 1999, and April 11-12, 2000, provided an opportunity for members to exchange ideas on ways to increase opportunities for beginning farmers and ranchers through Federal-State partnerships and to encourage more State participation. Members discussed various issues and drafted numerous recommendations, which were provided to the Secretary. During the June meetings, members will discuss the Secretary's responses and will formulate additional recommendations.

Attendance is open to all interested persons but limited to space available. Anyone wishing to make an oral statement should submit their request in writing (letter, fax, or e-mail) to Mark Falcone at the above address. Statements should be received no later than June 15, 2001. Requests should include the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. The floor will be open to oral presentations beginning at 1:00 p.m. EST on June 19, 2001. Comments will be limited to 5 minutes, and presenters will be approved on a first-come, first-served basis.

Persons with disabilities who require special accommodations to attend or participate in the meetings should contact Mark Falcone by June 15, 2001.

Signed in Washington, DC, on June 1, 2001.

James R. Little,

Acting Administrator, Farm Service Agency.
[FR Doc. 01-14301 Filed 6-4-01; 9:36 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Repayment Demand and Program Disqualification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice invites the general public and other public agencies to comment on proposed information collections. This Notice of Proposed Information Collection announces the intent of the Food and Nutrition Service to extend the information collection requirements associated with initiating collection actions against households who have received an overissuance in the Food Stamp Program. In addition, this Notice announces the Food and Nutrition Service's intent to extend the information collection requirements associated with intentional Program violation determinations.

DATES: Written comments must be submitted on or before August 6, 2001 to be assured consideration.

ADDRESSES: Send comments to Barbara Hallman, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 820, Alexandria, Virginia, 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), 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 the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: For initiating collection action, contact Susan Beard. For intentional Program

violation (IPV) determination, contact Greg Fortine. Both may be reached at (703) 305-2383.

SUPPLEMENTARY INFORMATION:

Title: Repayment Demand and Program Disqualification.

OMB Number: 0584-0492.

Form Number: None.

Expiration Date: August 31, 2001.

Type of Request: Revision of a currently approved collection.

Abstract: Section 13(b) of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2022(b)) and Food Stamp Program (FSP) regulations at 7 CFR 273.18 require State agencies to initiate collection action against households that have been overissued benefits. To initiate collection action, State agencies need to provide an affected household with written notification informing the household of the claim and demanding repayment. This process is automated in most State agencies. For initiating collection action on an overissuance, we are reducing the estimated annual reporting and recordkeeping burden for State agencies and households from 148,846 hours to 116,400 hours. The reason for the decline is to reflect the lower number of claims that were established in fiscal year (FY) 2000.

Note that, for recipient claims, this **Federal Register** Notice only covers the reporting and recordkeeping burden for initiating collection action. The burden associated with reporting collections and other claims management information on the FNS-209 report is covered under currently approved OMB number 0584-0069. The burden associated with referring delinquent claims and receiving collections through the Treasury Offset Program is covered under currently approved OMB number 0584-0446.

FSP regulations at 7 CFR 273.16 require State agencies to investigate any case of suspected fraud, and, where applicable, make an IPV determination either administratively or judicially. Notifications and activity involved in the IPV process include:

- The State agency providing written notification informing an individual suspected of committing an IPV of an impending administrative disqualification hearing or court action.
- An individual opting to accept the disqualification and waiving the right to an administrative disqualification hearing or court action by signing either a waiver to an administrative disqualification hearing or a disqualification consent agreement in cases of deferred adjudication.
- Once a determination is made regarding an IPV, the State agency sends

notification to the affected individual of the action taken on the administrative disqualification hearing or court decision.

Despite the decrease in FSP participation, IPV activity has not experienced a similar decline. While no discernible trend exists in recent year disqualification data, available data from FY 2000 shows a small decrease in IPV activity when compared to the data used to establish the existing burden. Therefore, we are decreasing the State agency and household annual reporting and recordkeeping burden for the activities related to IPV disqualifications from 36,628 hours to 34,254 hours.

In addition, one of the factors used by a State agency to determine the appropriate disqualification penalty to assign to an individual is whether or not the individual was found to have committed any prior IPV's. The way that State agencies make this determination is by accessing and checking the Disqualified Recipient Subsystem (DRS). DRS is an automated system developed by the Food and Nutrition Service that contains records of disqualifications in every State. State agencies are responsible for updating the system and checking it to determine the appropriate length of each disqualification. The burden associated with State use of DRS for IPV's was not included in this original OMB-approved burden. We now intend to incorporate this activity under this OMB burden number. The additional annual burden associated with the DRS process is estimated at 14,340 hours per year.

Summary of Estimated Burden

The net aggregate change from the existing to the proposed annual burden for this entire Proposed Collection is a decrease of 20,480 hours. For initiating collection action on an overissuance, we are reducing the estimated annual burden for State agencies and households from 148,846 hours to 116,400 hours to reflect the lower number of claims established in FY 2000. The IPV-related State agency and household annual burden, is being reduced from 36,628 hours to 34,254 hours to reflect the lower number of disqualifications. The additional annual burden associated with the DRS process is estimated at 14,340 hours per year.

Affected Public: State and local government, and food stamp households.

Estimated Number of Respondents: 676,053.

Number of Responses per Respondent: From 1 to 5.

Total Number of Annual Responses: 1,536,129.

Estimated Time per Response: 0.1074 hours.

Estimated Total Annual Burden: 164,994 hours.

Dated: May 25, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01-14153 Filed 6-5-01; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection: Proposed Collection; Comment Request; FNS-46, Issuance Reconciliation Report

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection contained in Form FNS-46, Issuance Reconciliation Report.

DATES: Written comments must be submitted on or before August 6, 2001.

ADDRESSES: Send comments and requests for copies of this information collection to: Jeffrey N. Cohen, Branch Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), 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 the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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.

FOR FURTHER INFORMATION CONTACT: Jeffrey N. Cohen, (703) 305-2523.

SUPPLEMENTARY INFORMATION:

Title: Issuance Reconciliation Report.

OMB Number: 0584-0080.

Form Number: FNS-46.

Expiration Date: 07/31/2001.

Type of Request: Revision of a currently approved collection.

Abstract: Section 7(d) of the Food Stamp Act of 1977, as amended, requires the Secretary to require State agencies to report on their issuance operations not less than monthly. (7 U.S.C. 2016(d)) Section 11(a) of the Act requires State agencies to assume responsibility for the issuance, control and accountability of benefits. (7 U.S.C. 2020(a)) Regulations at 7 CFR 274.4(a) and 274.4(b)(2) require State agencies to account for all issuance through the reconciliation process and submit a report on such issuance using Form FNS-46, Issuance Reconciliation Report. These reports must be submitted to the Food and Nutrition Service monthly and must reach FNS no later than 90 days following the end of each report month. The FNS-46 report reflects the total issuance, returns, and unauthorized issuance amounts resulting in the net Federal obligation.

Affected Public: State and local government employees or contractors.

Estimated Number of Respondents: 238.

Estimated Number of Responses per respondent: 12.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden: 22,848 hours annually.

Dated: May 31, 2001.

George A. Braley,

Acting Administrator.

[FR Doc. 01-14259 Filed 6-5-01; 8:45 am]

BILLING CODE 3410-30-U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given of the intention of the Natural Resources Conservation Service (NRCS) to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices.

These standards include Access Road, Diversion, Drainage Water Management, Fishpond Management, Irrigation Land Leveling, Herbaceous Wind Barriers, Pond Sealing or Lining—Bentonite Sealant, Pond Sealing or Lining—Soil dispersant, Roof Runoff Structure, and Surface Roughening. The standards are used to convey national guidance when developing the Field Office Technical Guide policies. NRCS State Conservationists and Directors for the Pacific Basin and Caribbean areas who choose to adopt these practices for use within their States/areas will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in resource management systems that treat highly erodible land or on land determined to be wetland.

EFFECTIVE DATES: Comments will be received until on or before August 6, 2001. This series of new or revised conservation practice standards will be adopted after the close of the 60-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS—CED in Washington, DC. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139—S, Washington, DC 20013—2890; telephone: (202) 720—5023. The standards are also available from, and can be downloaded via the Internet at: http://www.ftw.nrcs.usda.gov/practice_stdts.html.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding the disposition of those comments, and a final determination of change will be made.

Signed in Washington, DC, on April 20, 2001.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 01—14149 Filed 6—5—01; 8:45 am]

BILLING CODE 3410—16—U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC 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: Census Bureau.

Title: 2001 Panel of the Survey of Income and Program Participation, Wave 3 Topical Modules.

Form Number(s): SIPP/CAPI Automated Instrument, SIPP—21305(L) Director's Letter, SIPP—21003 Reminder Card.

Agency Approval Number: 0607—0875.

Type of Request: Revision of a currently approved collection.

Burden: 121,478 hours.

Number of Respondents: 78,750.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 3 Topical Module interview for the 2001 Panel of the Survey of Income and Program Participation (SIPP). We also request approval for a few replacement questions in the reinterview instrument. The core SIPP instrument, and reinterview instrument were cleared previously. The reinterview instrument will be used for quality control purposes. We are also seeking continued clearance for the SIPP Methods Panel instrument field testing to be conducted in October and November 2001. The test targets SIPP Wave 1 items and sections that require thorough and rigorous testing in order to improve the quality of core data. The experiment is conducted under the direction of the Methods Panel Team, which is committed to delivering an improved and less burdensome instrument for use in the 2004 SIPP Panel.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2001 SIPP Panel is scheduled for three years and will include nine waves beginning February 1, 2001.

The survey is molded around a central “core” of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as “topical modules.” The topical modules

for the 2001 Panel Wave 3 are Medical Expenses and Utilization of Health Care (Adults and Children), Work Related Expenses and Child Support Paid, and Assets, Liabilities, and Eligibility. Wave 3 interviews will be conducted from October 2001 through January 2002.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395—5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork 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 Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 2001.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,,
Office of the Chief Information Officer.*

[FR Doc. 01—14240 Filed 6—5—01; 8:45 am]

BILLING CODE 3510—07—P

DEPARTMENT OF COMMERCE**Submission for OMB Review;
Comment Request**

DOC 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: U.S. Census Bureau.

Title: 2002 Economic Census General Classification Report.

Form Number(s): NC-99023, NC-99023-L-1, NC-99023-L-11, NC-99500.

Agency Approval Number: None.

Type of Request: New collection.

Burden: FY 2002-38,333, FY 2003-66,666.

Number of Respondents: 600,000.

Avg. Hours Per Response: Under 6 minutes.

Needs and Uses: Accurate and reliable industry and geographic codes are critical to the Census Bureau's economic statistical programs. New businesses are assigned industry classifications by the Social Security Administration (SSA). Approximately 4 percent of these businesses cannot be assigned industry codes because insufficient information is provided on the Internal Revenue Service (IRS) Form SS-4. Since the 1997 Economic Census, the number of unclassified businesses has grown to almost 250,000. In order to provide detailed industry data for the 2002 Economic Census and the Business Register (Standard Statistical Establishment Listing (SSEL)), these unclassified businesses must be assigned North American Industry Classification System (NAICS) codes. During the 2002 Economic Census, the NC-99023, 2002 Economic Census General Classification Report will be used to collect information from unclassified single-unit establishments. In 2001, the year prior to the census, this form will be used to collect information from: 1) establishments with a significant amount of receipts but no payroll; 2) new businesses with a large amount of payroll, but insufficient industry classification; and 3) establishments that have been previously classified as farms, but report large amounts of non-farm payroll.

Establishments with significant receipts but no payroll are normally excluded from the economic census. This data collection will determine accurate NAICS codes and identify whether or not these establishments are within the scope of the 2002 Economic Census. New business classifications by the SSA are not always fully coded

because of insufficient information. This operation will assign NAICS codes to the unclassified units and ensure that the appropriate form will be mailed to the businesses during the census. In addition, establishments currently classified as farms but reporting substantial amounts of non-farm payroll may be incorrectly classified and excluded from the 2002 Economic Census. This operation will determine whether or not these establishments are in scope of the 2002 Economic Census.

The mail out of the NC-99023 form in 2001 will also include the new Ownership and Control form (NC-99500). Based on responses to this form, establishments identified as having an affiliation and/or multiple locations of operation will be set up in the Business Register (SSEL) as multi-unit companies with appropriate industry classifications prior to the 2002 Economic Census.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork 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 Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 2001.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 01-14241 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE**Submission for OMB Review;
Comment Request**

DOC 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: U.S. Census Bureau.

Title: 2002 Economic Census Classification Report.

Form Number(s): NC-99026.

Agency Approval Number: None.

Type of Request: New collection.

Burden: FY 2002-13,333, FY-2003-37,500.

Number of Respondents: 610,000.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: The Census Bureau implemented the new North American Industry Classification System (NAICS) for the 1997 Economic Census to replace the 1987 Standard Industrial Classification (SIC) system. The NAICS has been revised for the 2002 Economic Census. Many of the revisions significantly impact the Construction Sector. In order to provide detailed construction industry statistics reflecting NAICS revisions for the 2002 Economic Census, the Census Bureau will use the NC-99026, 2002 Economic Census Classification Report, to collect additional information from a sample of construction businesses.

Specifically, the Census Bureau will select a sample from the following groups of establishments: (1) Any single-unit construction establishment that is only partially coded or (2) any single-unit construction establishment that is currently classified in a NAICS industry that will be split into two or more NAICS industries for the 2002 Economic Census. The information collected will be used to assign the appropriate NAICS codes, update the Business Register (Standard Statistical Establishment List (SSEL)) and mailing list, improve the sampling frame, and ensure that the correct form is delivered during the initial mailing for the census. This information will be collected in 2001 (prior to the census).

During the 2002 Economic Census, the NC-99026 questionnaire also will be used to obtain classification information from partially coded small single-unit manufacturing, mining, and construction establishments, and construction establishments not receiving either a classification report form in 2001 or a more detailed Census of Construction form in the 2002 Economic Census.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork 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 Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 2001.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 01-14242 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1167]

Grant of Authority; Establishment of a Foreign-Trade Zone, Pensacola, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for “* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Pensacola-Escambia County Promotion and Development Commission (the Grantee), a Florida public corporation, has made application to the Board (FTZ Docket 34-2000, filed 7/6/00), requesting the establishment of a foreign-trade zone at sites in the Pensacola and Escambia County, Florida, area, adjacent to the Pensacola Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 43288, 7/13/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 249, at the

sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of May 2001.

Foreign-Trade Zones Board.

Donald L. Evans,

*Secretary of Commerce, Chairman and
Executive Officer.*

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01-14135 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21-2001]

Foreign-Trade Zone 177—Evansville, IN; Application for Subzone Status; Toyota Motor Manufacturing, Indiana, Inc., Plant (Motor Vehicles), Princeton, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 177, requesting special-purpose subzone status for the motor vehicle manufacturing plant of Toyota Motor Manufacturing, Indiana, Inc. (TMMI) (a subsidiary of Toyota Motor Manufacturing North America, Inc.), located in Princeton, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 25, 2001.

The TMMI plant (1,160 acres/1.66 million sq.ft.) is located at 4000 Tulip Tree Drive, Princeton (Gibson County), Indiana, some 25 miles north of Evansville. The facility is used to produce light-duty passenger vehicles (pickup trucks, sport utility vehicles, minivans) for export and the domestic market. At full capacity, the facility (2,500 employees) will produce up to approximately 360,000 vehicles annually. Components purchased from abroad (approximately 43% of material value) include: engines and parts of engines, connecting rods, cylinder heads, brackets, sensors, valves, engine management systems, body parts, fasteners, exhaust systems, catalytic converters, speedometers and parts, parts of suspensions, hub units, CV joints, parts of steering systems, brake hoses and cables, airbags, half shafts, transmissions and parts of transmissions, transfer cases, differentials, bearings and bearing

housings, flywheels/pulleys, wiring harnesses, transformers, lighting equipment, mirrors, starters, gaskets, belts, locks, rubber vibration control parts, global positioning systems, capacitors, thermometers, plugs, filters, windshield wipers, bumpers, tubing, air-conditioner components, flow meters, springs, fans/blowers, lug nuts, rubber hoses, CD/radios/audio systems, horns, relays, switches, ignition wires, and electrical apparatus (duty rate range: free—5.3%). The application indicates that TMMI's domestic sourcing will increase in the future.

FTZ procedures would exempt TMMI from Customs duty payments on the foreign components used in export production (1% of shipments). On its domestic sales and exports to NAFTA countries, TMMI would be able to choose the duty rate that applies to finished passenger vehicles (2.5%) for the foreign inputs noted above that have higher rates. Foreign status and certain domestic status parts and materials would be exempt from local inventory taxes. Customs duties would be deferred and possibly reduced on foreign status production equipment. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 6, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period August 20, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Room 238, 101 NW Martin Luther King Blvd., Evansville, IN 47708

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th Street & Constitution Avenue, NW, Washington, DC 20230-0002

Dated: May 25, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01-14136 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-809]

Certain Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review.

SUMMARY: On May 2, 2001, the Department of Commerce published a notice of preliminary results of its antidumping duty changed circumstances review on certain welded stainless steel pipe from Korea (see *Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Changed Circumstances Review*, 66 FR 21910). We have now completed the review and determine Hyundai Steel Company to be the successor-in-interest to Hyundai Pipe Company, Ltd.

EFFECTIVE DATE: June 6, 2001.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Sibel Oyman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0176 and (202) 482-1174, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR part 351 (2000).

SUPPLEMENTARY INFORMATION:**Background**

On May 2, 2001, the Department published its preliminary results in the **Federal Register** (see *Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Changed Circumstances Review*, 66 FR 21910) ("Preliminary Results"), preliminarily finding Hyundai Hysco to be the successor-in-interest to Hyundai Pipe Company, Ltd. ("HDP"). No comments were received regarding these findings.

Scope of the Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and Customs Service purposes, our written description of the scope of this proceeding is dispositive.

Successorship and Final Results of Review

Because we received no comments on the preliminary results, for the reasons stated in the *Preliminary Results* and based on the facts on the record, we find Hyundai Hysco to be the successor to HDP for antidumping duty cash deposit purposes.

Therefore, Hyundai Hysco will be assigned HDP's cash deposit rate of 2.64 percent *ad valorem*. This cash deposit requirement will be effective upon publication of this notice of final results of changed circumstances review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 353.221(c)(4).

Dated: May 29, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01-14277 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Amended Final Results of Administrative Review and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of the antidumping duty administrative review and new shipper reviews of freshwater crawfish tail meat from the People's Republic of China.

EFFECTIVE DATE: June 6, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, Abdelali Elouaradia or Maureen Flannery, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0648, (202) 482-1374 or (202) 482-3020, respectively.

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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2000).

Scope of the Review

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10, 1605.40.10.90, 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Amendment of Final Results

On April 24, 2001, the Department of Commerce (the Department) published the final results of its administrative and new shipper reviews on freshwater crawfish tail meat (crawfish tail meat) from the People's Republic of China (PRC) (66 FR 20634). This review covered numerous exporters, including Huaiyin Foreign Trade Corporation (30) (Huaiyin30), Yancheng Foreign Trade Corporation (Yancheng FTC), Yancheng Haiteng Aquatic Products & Foods Company, Ltd. (Yancheng Haiteng), Ningbo Nanlian Frozen Foods Corporation, Ltd./Huaiyin Foreign Trade Corporation (5) (Ningbo Nanlian/Huaiyin(5)), Suqian Foreign Trade Company, Ltd. (Suqian FTC), Yangzhou Lakebest Foods Company, Ltd. (Yangzhou Lakebest), Shantou SEZ Yangfeng Marine Products Company (Shantou SEZ), Qingdao Zhengri Seafood Co., Ltd. (Qingdao Zhengri), and Fujian Pelagic Fishery Group Company (Fujian Pelagic). The period of review (POR) is September 1, 1998 through August 31, 1999.

On April 23, 2001, we received a submission from Huaiyin30 alleging a clerical error in the final results of the

administrative review. The allegation was filed in a timely fashion.

Comment 1: Huaiyin30 alleges that the Department committed a ministerial error in the final results of the administrative review, by using an incorrect sales price for one of Huaiyin30's U.S. sales. For further details, see the business proprietary version of the memorandum from Matthew Renkey to the file, "Amendment of the Final Results of the 1998-99 Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Huaiyin Foreign Trade Corporation (30)," dated May 24, 2001 ("Amendment Memorandum").

Department's Position: After a review of Huaiyin30's allegation, we agree with Huaiyin30 and have corrected our calculation worksheet to show the correct U.S. sales price for the sale in question. Please see "Amendment Memorandum," a public version of which is available in the Central Records Unit, Room B-099 of the Department of Commerce building, 14th Street and Constitution Ave, NW., Washington, DC.

Amended Final Results of Administrative Review

As a result of our review and the correction of the ministerial error described above, we have determined that the following margins exist:

Manufacturer/exporter	Margin (percent)
*Ningbo Nanlian/Huaiyin5	2.75
*Yancheng Haiteng	0.00
Huaiyin30	138.69
*Yancheng FTC	35.73
*Fujian Pelagic	38.76
*Yangzhou Lakebest	0.00
*Suqian FTC	0.00
*Qingdao Zhengri	0.00
*Shantou SEZ	0.00
*PRC-Wide Rate	201.63

*Not affected by these Amended Final Results.

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we will instruct Customs to assess an importer-specific percentage margin for the subject merchandise on each of that importer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of amended final results of administrative review and new shipper reviews for all shipments of freshwater crawfish tail meat from the PRC entered,

or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, 201.63 percent; and (4) for all other non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice is in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: May 24, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01-14279 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-485-806]

Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 6, 2001.

FOR FURTHER INFORMATION CONTACT: Christopher Riker or Charles Riggle, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0186 or (202) 482-0650, respectively.

Amendment of Preliminary Determination

The Department of Commerce (the Department) is amending the preliminary determination in the antidumping investigation of certain hot-rolled carbon steel flat products (HRS) from Romania. This amended preliminary determination results in revised antidumping rates.

Background

On April 23, 2001, the Department issued its affirmative preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Romania*, 66 FR 22194 (May 3, 2001). On May 1, 2001, the Department received timely allegations from certain petitioners¹ of ministerial errors in connection with the preliminary determination.

The petitioners alleged that significant ministerial errors exist, specifically that the Department did not value electricity or methane gas correctly in their factors of production valuation memorandum and erred in not including interest expenses in its normal value calculations. *See* letter from Dewey Ballantine to the Department of Commerce alleging ministerial errors in the preliminary determination (May 1, 2001).

Significant Ministerial Error

A significant ministerial error is defined as a correction which, singly or

in combination with other errors, would result in (1) a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or de minimis and a weighted-average dumping margin of greater than de minimis or vice versa. *See* 19 CFR 351.224(g).

Amended Determination

The Department has reviewed its preliminary calculations and agrees with the petitioners that it made certain ministerial errors within the meaning of 19 CFR 351.224(f) and (g). We agree with the petitioners that the Department erred in miscalculating the surrogate value for electricity, and should have included interest expenses in the normal value calculations. However, we do not agree that the Department erred in not calculating a surrogate value for methane gas. For a detailed analysis of these allegations, and the Department's determinations, *see* the May 25, 2001 Memorandum to Bernard T. Carreau from Christopher Riker, regarding *Ministerial Error Allegations* on file in room B-099 of the Main Commerce building. As a result of our analysis of the petitioners' allegations and because those errors were significant within the meaning of 19 CFR 351.224(g), we are amending our preliminary determination to revise the antidumping rates for Sidex Trading, SRL & Sidex International, Plc, Metanef, S.A., Metagrimex, S.A. and Metalexportimport, S.A., in accordance with 19 CFR 351.224(e). Suspension of liquidation will be revised accordingly and parties shall be notified of this determination, in accordance with sections 733(d) and (f) of the Tariff Act of 1930, as amended.

The following weighted-average dumping margins apply:

Manufacturer/exporter	Margin (percent)
Sidex Trading, SRL & Sidex International, Plc	50.96
Metanef, S.A.	62.37
Metagrimex, S.A.	50.23
Metalexportimport, S.A.	54.22
Romania-Wide	88.62

The Romania-wide rate has not been amended, and applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: May 29, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01-14280 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-580-839]

Notice of Final Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We have completed the changed circumstances review of the antidumping duty order on polyester staple fiber from the Republic of Korea. We determine that the Huvis Corporation is not the successor-in-interest to the Samyang Corporation, SK Chemicals Co., Ltd., or to the Samyang Corporation and SK Chemicals Co. jointly and that the Huvis Corporation is subject to the "all others" rate calculated in the antidumping duty investigation.

EFFECTIVE DATE: June 6, 2001.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney at (202) 482-3464 or (202) 482-1778, respectively; AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2000).

Background

On May 25, 2000, the Department of Commerce (the Department) issued an antidumping duty order on certain polyester staple fiber (PSF) from the Republic of Korea (Korea). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Polyester Staple Fiber from Republic of*

¹ The petitioners who alleged ministerial errors were Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation.

Korea, 65 FR 33807 (May 25, 2000). The order excluded merchandise produced by Samyang Corporation (Samyang), which had been found to be dumping at a *de minimis* level. SK Chemicals Co., Ltd. (SK Chemicals), was not examined in the investigation and its entries of subject merchandise are currently being suspended at the "all others" cash deposit rate of 11.35 percent.

On November 20, 2000, Samyang and the Huvis Corporation (Huvis) informed the Department that Samyang and SK Chemicals had established Huvis as a 50–50 joint venture, effective November 1, 2000. They requested that the Department conduct a changed circumstances review pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b). Samyang and Huvis argued that Huvis is the successor-in-interest to Samyang and, therefore, is entitled to exclusion from the antidumping order. In the alternative, they asked that the Department find that Huvis is a successor to Samyang and SK Chemicals jointly and that the Department calculate a weighted-average cash deposit rate for Huvis based on Samyang's and SK Chemical's rates.

The Department found "good cause" to conduct a changed circumstances review and on January 9, 2001, concurrently issued a notice of initiation and preliminary results. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber from the Republic of Korea*, 66 FR 1642 (January 9, 2001) (*Preliminary Results*). In the *Preliminary Results*, we determined that Huvis is not the successor-in-interest to Samyang, SK Chemicals, or both companies jointly. In addition, we preliminarily found that Huvis is covered by the antidumping duty order as a producer and exporter of PSF from Korea. Consequently, we instructed the Customs Service to suspend liquidation and to collect estimated antidumping duties at the "all others" rate of 11.35 percent on all entries of subject merchandise produced and exported by Huvis retroactive to November 1, 2000.

On January 24, 2001, we received a request from an importer of PSF from Korea, Stein Fibers, Ltd. (Stein Fibers), to clarify our instructions to the Customs Service with respect to subject merchandise which Stein Fibers claimed was produced by Samyang, but not entered until after November 1, 2000.

The Department issued instructions to the Customs Service on April 6, 2001, to liquidate without regard to dumping duties entries which were sold, produced, and exported by Samyang

prior to November 1, 2000. For those entries that Stein Fibers claimed were produced and sold by Samyang but exported after November 1, 2000, we instructed the Customs Service to continue to suspend liquidation at a cash deposit rate of 0.00 percent until further notice. In these instructions, we stated that we would analyze, in the context of the final results of the changed circumstances review, whether these were shipments of merchandise sold, produced, and exported by Samyang or Huvis.

On April 24, 2001, we received a letter from Huvis stating that it did not intend to challenge the preliminary results of the changed circumstances review. We received a letter from the petitioners, E.I. DuPont de Nemours and Co., Artega Specialities S.a.r.l., d/b/a KoSa, Wellman Inc., and Intercontinental Polymers, Inc., on May 1, 2001, stating that they agreed with the preliminary results of the changed circumstances review.

Scope of the Order

The product covered by this order is certain polyester staple fiber. Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order is polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of this order is dispositive.

Final Results of Changed Circumstances Antidumping Review

No new information or argument has been submitted that would alter the conclusion we reached in our preliminary results. Therefore, we determine that Huvis is not the successor-in-interest to either Samyang or SK individually, or to Samyang and SK jointly, and that entries of merchandise produced by Huvis are subject to the antidumping duty order on PSF from Korea at the "all others" rate. We will continue to suspend liquidation for merchandise produced and exported by Huvis on or after November 1, 2000, the date of the joint-venture merger of Samyang and SK Chemicals, and to require the deposit of estimated duties at the "all others" rate of 11.35 percent.

With respect to the imports of subject merchandise by Stein Fibers, it is not necessary, at this time, to determine whether these entries were of Samyang or Huvis merchandise. We will continue to suspend the liquidation of these entries, which are listed in the April 6, 2001, message to Customs, at 0.00 percent. These entries will be covered by the results of an administrative review of the antidumping duty order on PSF from Korea, if requested during the anniversary month, or automatic assessment, as appropriate.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 19 CFR 351.306 of the antidumping duty regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results and notice are in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: May 29, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–14276 Filed 6–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**International Trade Administration****[A-583-827]****Static Random Access Memory Semiconductors From Taiwan: Initiation of Antidumping Duty New Shipper Review**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on static random access memory semiconductors from Taiwan. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating a review for Elite Semiconductor Memory Technology Inc./Elite Memory Technology, Inc. (collectively "ESMT").

EFFECTIVE DATE: June 6, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0656.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the

effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR part 351 (2000).

SUPPLEMENTARY INFORMATION:**Background**

On April 30, 2001, the Department received a timely request from ESMT, in accordance with 19 CFR 351.214(d), for a new shipper review of the antidumping duty order on static random access memory semiconductors (SRAMs) from Taiwan. This order has an April anniversary date. *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8090 (Feb. 23, 1998). Therefore, the request is timely pursuant to 19 CFR 351.214(c). In accordance with 19 CFR 351.214(b)(2)(i) and (iii)(A), ESMT has certified (1) that it did not export SRAMs to the United States during the period of investigation (POI), and (2) that since the investigation was initiated, it never has been affiliated with any exporter or producer who exported SRAMs to the United States during the POI, including those not individually examined during the investigation. Also, in accordance with 19 CFR 351.214(b)(2)(iv), ESMT

submitted documentation establishing (1) the date on which it first shipped the subject merchandise to the United States, (2) the volume of that shipment and subsequent shipments, and (3) the date of the first sale to an unaffiliated customer in the United States.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review as requested.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on SRAMs from Taiwan. On May 24, 2001, ESMT agreed to waive the time limits of 19 CFR 351.214(i), in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrent with the administrative review of this order for the period April 1, 2000, through March 31, 2001, as requested pursuant to section 751(a) of the Act. Therefore, we intend to issue the preliminary results of this review not later than 245 days after the last day of the anniversary month. In accordance with our practice, all other provisions of 19 CFR 351.214 will apply to ESMT throughout the duration of this new shipper review.

Antidumping duty proceeding	Period to be reviewed
Taiwan: Static Random Access Memory Semiconductors, A-583-827, Elite Semiconductor Memory Technology Inc./Elite Memory Technology, Inc	04/01/00-03/31/01

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise for the relevant exporter/producer and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed company.

Interested parties that need access to the proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and this notice are in accordance with section 751(a) of the Act and 19 CFR 351.214(d).

Dated: May 31, 2001.

Richard W. Moreland,

Deputy Assistant Secretary, Office of AD/CVD Enforcement Group I.

[FR Doc. 01-14134 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****[A-357-812, A-570-863, C-357-813]****Notice of Postponement of Final Determinations of Sales at Less Than Fair Value: Honey From Argentina and the People's Republic of China and Postponement of Final Countervailing Duty Determination: Honey From Argentina**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 6, 2001.

FOR FURTHER INFORMATION CONTACT:

Melissa Blackledge (Argentina) at (202) 482-3518, Angelica Mendoza (the People's Republic of China (the PRC)) at (202) 482-3019, or Charles Rast at (202) 482-1324 and Donna Kinsella at (202) 482-0194; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Postponement of Final Determination and Extension of Provisional Measures

On February 27, 2001, petitioners requested alignment of the final determination in the investigation of countervailable subsidies provided to producers and exporters of honey from Argentina with the final determination of the antidumping duty investigation of honey from the PRC. In accordance with section 705(a)(1) of the Tariff Act, we

aligned the final determination in that countervailing duty investigation with the final determination in the companion antidumping investigation of honey from the PRC. *See Honey from Argentina: Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determination on Honey from the People's Republic of China*, 66 FR 14521 (March 13, 2001).

On May 11, 2001 the Department published its preliminary determinations in the antidumping investigations of honey from Argentina and the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from Argentina*, 66 FR 24108 (May 11, 2001) and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 24101 (May 11, 2001). The notices stated that the Department would issue its final determinations no later than 75 days after the date of issuance of the notices.

Pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Tariff Act), on May 11, 2001, Asociación de Cooperativas Argentinas (ACA), a respondent in the Argentine investigation, requested that the Department postpone its final determination to the fullest extent permitted by the statute and the Department's regulations. On May 14, 2001, seven exporters of subject merchandise from the PRC participating in the investigation made the same request.¹ In addition, the exporters in both investigations also consented to an extension of the period for the imposition of provisional measures to the fullest extent permitted, or six months, whichever is later. In accordance with section 735(a)(2)(A) of the Tariff Act and 19 CFR 351.210(b), because (1) the preliminary determinations were affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting the exporters' request and are postponing the final determinations until no later than 135 days after publication of the preliminary determinations in the **Federal Register**.

¹ The exporters were Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import and Export Corporation, Shanghai Eswell Enterprise Co., Ltd., High Hope International Group Jiangsu Foodstuffs Import and Export Corporation, Kunshan Foreign Trade Corporation, Zhejiang Native Produce and Animal By-Products Import and Export Corporation, Henan Native Produce Import and Export Corporation, and Anhui Native Produce Import and Export Corporation.

Suspension of liquidation will be extended accordingly.

This postponement is in accordance with section 735(a)(2)(A) of the Tariff Act, and 19 CFR 351.210(b)(2).

Dated: May 29, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01-14278 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-830]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Bar From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary determination of countervailing duty investigation.

EFFECTIVE DATE: June 6, 2001.

FOR FURTHER INFORMATION CONTACT:

Suresh Maniam or Greg Campbell at (202) 482-0176 and (202) 482-2239, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Preliminary Determination: The Department of Commerce (the "Department") preliminarily determines that countervailable subsidies are being provided to producers or exporters of stainless steel bar from Italy. For information on the estimated countervailing duty rates, see *infra* section on "Suspension of Liquidation."

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigation: Stainless Steel Bar from Italy*, 66 FR 7739 (January 25, 2001) ("Initiation Notice").

On January 30, 2001, we issued countervailing duty questionnaires to the Government of Italy ("GOI"), the European Commission ("EC"), and the producers/exporters of the subject merchandise. On March 8, 2001, we published a postponement of the preliminary determination of this investigation until May 29, 2001. *See Stainless Steel Bar from Italy:*

Postponement of Time Limit for Preliminary Determination of Countervailing Duty Investigation, 66 FR 13911 (March 8, 2001).

On March 9, 2001, Acciaierie Bertoli Safau S.p.A. ("ABS") submitted a request to exclude certain merchandise from the scope of this investigation. On March 26, 2001, the petitioners submitted an objection to this request. See *infra* section on "Scope of the Investigation: Scope Comments" for an analysis of these submissions and the Department's resulting determination.

On March 26, 2001, we received questionnaire responses from the GOI, the EC, and the responding companies (Trafileria Bedini S.r.l. ("Bedini"), Acciaiera Foroni S.p.A. ("Foroni"), Italfond S.p.A. ("Italfond"), Rodacciai S.p.A. ("Rodacciai"), and Acciaierie Valbruna S.r.l. ("Valbruna")/Acciaierie Bolzano S.r.l. ("Bolzano")). We did not receive a response to our questionnaire from Cogne Acciai Speciali S.r.l. ("CAS") (see *infra* section on "Use of Facts Available" for our treatment of CAS in this investigation).

On April 9, 2001, and April 10, 2001, the petitioners submitted comments regarding the questionnaire responses from Foroni, Valbruna, and the GOI.

We issued supplemental questionnaires to the EC, Italfond, and Rodacciai on April 19, 2001, and to the GOI, Bedini, Valbruna, and Foroni on April 20, 2001.

We received responses to the supplemental questionnaires from the EC on May 3, 2001, and from the GOI, Italfond, Rodacciai, Bedini, Valbruna, and Foroni on May 11, 2001.

We issued a second supplemental questionnaire to Valbruna on May 14, 2001, and received a response from Valbruna on May 16, 2001.

On May 16, 2000, the petitioners filed comments regarding the selection of an adverse facts available subsidy rate for CAS and, on May 17, 2001, filed comments regarding the supplemental questionnaire responses by Valbruna and the GOI.

The Applicable Statute and Regulations

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. In addition, unless otherwise indicated, all citations to the Department's regulations are to our regulations as codified at 19 CFR Part 351 (2000).

The Petitioners

The petition in this investigation was filed by Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America, AFL-CIO/CLC (collectively, "the petitioners").

Scope of the Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times in thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled product), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedules of the United States* ("HTSUS").

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

On March 9, 2001, ABS, an Italian producer and exporter of stainless steel bar, submitted a request to exclude hot-rolled stainless steel bar ("hot-rolled bar") greater than six inches in diameter

from the scope. On March 26, 2001, the petitioners submitted an objection to ABS' scope exclusion request.

ABS first argued that no U.S. producer, to the best of its knowledge, currently produces hot-rolled bar greater than six inches in diameter. While U.S. producers do manufacture stainless steel bar greater than six inches, ABS stated this is bar produced by forging ("forged bar"), not by hot-rolling. Second, according to ABS, hot-rolled bar and forged bar possess different physical and mechanical properties. ABS argued that forged products have a more "central compactness" and can be used for all applications. On the other hand, ABS claimed, hot-rolled bar products have a more irregular structure along the axis and are, therefore, only suitable for the production of hollow products. According to ABS, while forged bar could be used in the manufacture of hollow products as well, the cost of forging stainless steel ingots into large diameter stainless steel bars would be approximately three times the cost of hot-rolling the same ingots into large diameter stainless steel bar. ABS claimed the difference is due to higher equipment productivity and lower energy costs of a hot-rolling line compared to a forging press. Third, ABS asserted, hot-rolled bar and forged bar do not compete in the same market. ABS suggested that customers requiring the internal physical properties provided by forging would pay the higher price for forged bars, while those not needing these physical properties would only pay for the lower priced hot-rolled bars.

The petitioners argued that hot-rolled bar products should not be differentiated from forged bar products because both hot-rolled and forged bar can have the same essential physical and mechanical properties. Moreover, the petitioners claimed, both forged and hot-rolled bar undergo the same finishing operations, have the same end-use applications, and enter the United States under the same tariff schedule number. In addition, the petitioners argued ABS did not identify the specific "internal physical characteristics" that would enable the Department or the Customs Service to distinguish between the hot-rolled and forged products. In the petitioners' view, "better central compactness" is too vague a distinction for the Department to quantify the differences. In reality, according to the petitioners, a manufacturer can produce a product by either forging or hot-rolling to meet the same specifications. As a result, the petitioners claimed the qualities important to a customer are not based on the production processes, but

rather the specifications to be met. Finally, the petitioners stated that Slater Steels Corporation, a U.S. stainless steel producer, produces hot-rolled bar over six inches in diameter and, accordingly, suggested that the argument for exclusion based on an absence of U.S. production is unsupportable.

The scope of a proceeding is intended to accurately reflect the product for which the domestic industry is seeking relief. *See* Preamble to the *CVD Regulations*, 62 FR 27295, 27323. (November 25, 1998) ("Preamble"). To ensure the scope is not unintentionally over-inclusive, the Department seeks input from interested parties. Thus, in the *Initiation Notice*, we set aside a period to receive comments that would help us refine the scope language to better reflect the actual product coverage intended by the domestic industry.

ABS has suggested that hot-rolled bar greater than 6 inches in diameter is not produced in the United States, has different physical properties from forged bar, and does not compete with forged bar. The petitioners have stated that the U.S. industry does, in fact, produce hot-rolled bar in this size, that no difference exists between hot-rolled and forged bar, and that hot-rolled and forged bar do compete with each other. Because the petitioners intended for this product to be included in the scope, we have determined that the scope language is not overly-inclusive with regard to this product. As a result, we have not modified the scope of this investigation because the current scope language includes hot-rolled bar, as intended by the petitioners.

Injury Test

Because Italy is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On February 23, 2001, the ITC published its preliminary determination finding that there is a reasonable indication of material injury or threat of material injury to an industry in the United States by reason of imports of stainless steel bar from Italy. *See Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom*, 66 FR 11314 (February 23, 2001).

Alignment With Final Antidumping Duty Determination

On May 9, 2001, the petitioners submitted a letter requesting alignment

of the final determination in this investigation with the final determination in the companion antidumping duty investigation (*see Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom*, 66 FR 7620 (January 24, 2001)). The companion antidumping duty investigation and this countervailing duty investigation were initiated on the same date and have the same scope. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigation of stainless steel bar from Italy.

In accordance with section 703(d) of the Act, the suspension of liquidation resulting from this preliminary affirmative countervailing duty determination will remain in effect no longer than four months.

Period of Investigation

The period of investigation ("POI") for which we are measuring subsidies is the calendar year 2000.

Changes in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit ("CAFC") in *Delverde Srl v. United States*, 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied* (June 20, 2000) ("*Delverde III*"), rejected the Department's change-in-ownership methodology as explained in the *General Issues Appendix*.¹ The CAFC held that "the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government." *Delverde III*, 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000, following the CAFC's decision in *Delverde III*, and also applied in *Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative*

Review, 66 FR 2885 (January 12, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this preliminary determination.

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a "financial contribution" and a "benefit" have been received by the "person" under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the "person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

We have preliminarily determined that CAS and Valbruna are the only respondents with changes in ownership requiring this analysis because no other respondent (or its predecessor) received subsidies prior to a change in ownership that were not fully expensed or allocated prior to the POI. Our findings with regard to the relevant changes in ownership are as follows.

CAS

As noted *infra* in the "Use of Facts Available" section, CAS withheld requested information regarding its changes in ownership. Consequently, the Department is unable to determine, *inter alia*, whether CAS and its pre-sale predecessors constitute a continuous business entity. Consistent with section 776(b) of the Act, we have made an adverse inference in selecting from the facts available with respect to CAS. Specifically, we find that CAS and its predecessors are continuing business entity for the purposes of a subsidy benefit analysis. Accordingly, we preliminarily determine that certain subsidies provided to the predecessor companies continue to benefit the privatized CAS.

Valbruna

We have not made a finding for the purposes of this preliminary determination as to whether pre-sale Bolzano and pre-sale Valbruna are distinct persons from the respondent Valbruna. We note the potential POI benefits for any pre-sale subsidies to Bolzano (*e.g.*, Bolzano Law 25/81) are insignificant, amounting to 0.11 percent. Assuming *arguendo* that these pre-sale subsidies continued to benefit Valbruna in the POI, the preliminary *ad valorem* rate (reflecting, in full, any POI benefits of pre-sale subsidies) for Valbruna would be *de minimis*. Therefore, application of the change in ownership methodology is not relevant in this investigation.

However, should we obtain any information subsequent to this preliminary determination indicating the final *ad valorem* rate for Valbruna should be above *de minimis*, we will give all parties sufficient opportunity to comment on whether and how Bolzano's 1995 sale affects the POI benefit to Valbruna of any pre-sale subsidies.

Use of Facts Available

Sections 776(a)(2)(A) and (B) of the Act require the use of facts available when an interested party withholds information requested by the Department, or when an interested party fails to provide the information required in a timely manner and in the format requested. In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability.

In this investigation, we are presented with an unusual situation. CAS, a

¹ *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37225 (July 9, 1993).

company that was selected to respond to our CVD questionnaire, declined to do so. However, in their responses to our questionnaires, the GOI and EC reported much of the information regarding the assistance provided to CAS. Also, because CAS was investigated in *Wire Rod*, the record of that proceeding is a source of additional information about CAS and the programs from which CAS benefitted.

Although CAS failed to cooperate to the best of its ability in refusing to respond to our questionnaire, we cannot ignore the information reported to us by the GOI and EC about subsidies given to CAS. Therefore, for those programs where information provided by the GOI or EC permits calculation of the subsidy to CAS, we have relied upon that information.

With respect to information from *Wire Rod*, several programs investigated in that proceeding are also being investigated in this case. If a program was found to be specific, to have constituted a financial contribution, or to have conferred a benefit in *Wire Rod*, and no new information to the contrary has been provided in this investigation, we have adopted the finding reached in *Wire Rod*. While this information from *Wire Rod* regarding CAS may be characterized as "facts available," we have not drawn an adverse inference in the application of this information.

In addition to the subsidy amounts, it is also necessary to have information on the value of CAS' sales in order to calculate the *ad valorem* benefit of the subsidy and, where necessary, to perform the 0.5 percent expense test described in 19 CFR 351.524(b)(2). We obtained CAS' total sales revenue amounts for the years 1997–1999 from a public Dunn & Bradstreet report. Because a total sales value for the POI (2000) is not available, we averaged sales revenues for the years 1997–1999, and used this amount to represent POI sales. Sales over the three-year period from 1997–1999 were relatively constant.

Where the value of CAS' exports during the POI was required, we derived this amount using a ratio of CAS' export sales to total sales provided in the Dunn & Bradstreet report ((see *Memorandum to the File*, "Miscellaneous Information used for the Calculations," dated May 29, 2001 at Attachment 1 ("Miscellaneous Information Memo"))).

In those instances where the available information does not provide a basis for calculating the subsidy to CAS, we have drawn an adverse inference due to CAS' failure to cooperate to the best of its ability in this investigation. Because no information has been provided

regarding the issue of whether CAS was the same entity before and after privatization, we have treated CAS as the same entity, with the result that CAS' full share of ILVA's subsidies have been attributed to CAS (see *infra* section on Programs Preliminarily Determined to Be Countervailable: Company-Specific Subsidies Conferred by the Government of Italy). In another instance, we did not have information on the actual amount of waste disposal offset payments received by CAS during the POI (see *infra* section on Programs Preliminarily Determined to Be Countervailable: Company-Specific Subsidies Conferred by the Regional Government of Valle D'Aosta). Therefore, we have used the maximum amount calculated by the granting regional government.

When employing an adverse inference, the statute indicates the Department may rely upon information derived from, *inter alia*, the petition. In doing so, however, the Department should "to the extent practicable" corroborate the information from independent sources reasonably at its disposal. See Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994), at 870 regarding use of "secondary" information. In this case, we have reviewed information on the CAS website (www.cogne.com/en/history.html) regarding the change in ownership of the company. While the company has undergone some restructuring in recent years, there is no indication that CAS is not the same entity before and after its privatization in 1994. Therefore, we preliminarily determine that the information supplied by the petitioners regarding CAS' change of ownership has probative value, and that we may appropriately rely upon it.

Subsidies Valuation Information

Allocation Period

Under 19 CFR section 351.524(b) of our regulations, non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. 19 CFR section 351.524(d)(2) creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the "IRS Tables"). For stainless steel bar, the IRS Tables prescribe an AUL of 15 years.

We have used the 15-year allocation period for all respondents, with the following exceptions.

Subsidies to CAS and Valbruna That Were Countervailed in Wire Rod

Certain subsidies to CAS and Valbruna were countervailed in *Wire Rod*. At the time of *Wire Rod*, it was our practice to calculate company-specific AULs. For both CAS and Valbruna, the calculated AUL was 12 years. As a matter of practice, where a subsidy has been allocated over a particular period, we will continue to use the same allocation period for that subsidy from proceeding to proceeding. See, e.g., *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from France*, 64 FR 30774, 30778 (June 8, 1999); see also *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277, 73280 (December 29, 1999). Therefore, for those subsidies to CAS and Valbruna that were allocated over a 12-year period in *Wire Rod*, we have continued to use the 12-year allocation period calculated in that proceeding. However, for the final determination, we will consider whether this earlier established practice is consistent with our current regulations. For subsidies to these companies that were not countervailed in *Wire Rod*, we have used the 15-year allocation period from the IRS Tables. (See further discussion *infra* of Valbruna).

Foroni

For this investigation, Foroni calculated its company-specific AUL. This AUL differs significantly from the 15-year AUL in the IRS Tables. Further, Foroni claims its calculation is an estimate of its actual useful life of assets and excludes any effects from the application of accelerated depreciation, special charges, and/or asset revaluations over the relevant years. Therefore, for purposes of this preliminary determination, we find Foroni to have rebutted the presumption in favor of the IRS Tables, according to 19 CFR section 351.524(d)(2), and we have allocated non-recurring subsidies to this company over its company-specific AUL.

Valbruna

Valbruna/Bolzano also calculated its company-specific AUL. However, this company-specific AUL does not differ significantly from the period in the IRS Tables. Therefore, we have allocated all subsidies received by Valbruna/Bolzano, except those countervailed in *Wire Rod*, over 15 years.

For non-recurring subsidies to all respondents, we have applied the "0.5

percent expense test” described in 19 CFR section 351.524(b)(2) of our regulations. Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsidies is less than 0.5 percent of sales, the benefits are allocated to the year of receipt rather than being allocated over the AUL period.

Benchmarks for Loans and Discount Rates

Pursuant to 19 CFR section 351.505(a) and section 351.524(c)(3)(i), the Department will use as long-term loan benchmarks and discount rates the actual cost of long-term borrowing by the company, when available. For the reasons discussed *infra*, we have not accepted actual borrowing rates as reported by respondents. Instead, pursuant to 19 CFR section 351.505(a)(3)(ii), we have calculated the average cost of long-term fixed-rate loans in Italy. Consistent with previous cases, we relied on the Italian Interbank Rate (“ABI”) as the basis for the long-term benchmark rate. *See, e.g., Wire Rod*, 64 FR at 40476–77; *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy*, 64 FR 15508, 15511 (March 31, 1999) (“*Plate in Coils*”); *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30624, 30627 (June 8, 1999) (“*Sheet and Strip*”); *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon Quality Steel Plate From Italy*, 64 FR 73244, 73248 (December 29, 1999) (“*CTL Carbon Plate*”).

We added two amounts to this rate. First, an upward adjustment is necessary because the ABI rate represents a long-term interest rate to banks’ most preferred customers with established low-risk credit histories. For other customers, banks will typically add a spread ranging from 0.55 percent to 4 percent, to the ABI rate depending on the company’s financial health. To reflect this, we have added the average of this spread, 2.28 percent, to the ABI rate. Second, an additional amount is needed to reflect the expenses associated with long-term lending activities. *See CTL Carbon Plate*, 64 FR at 73248; *Plate in Coils*, 64 at 15511; *Sheet and Strip*, 64 at 30627. Specifically, we found these expenses amounted to 8.5 percent of the interest charged and have added this amount to our benchmark. *Id.*

Rodacciai provided the ABI rate as its cost of long-term capital in the years it

received certain subsidies. However, because Rodacciai provided no evidence the company was actually able to receive loans at the ABI rate, we have preliminarily allocated non-recurring benefits and calculated long-term loan benefits using the rate described above. At verification, time permitting, we intend to verify whether Rodacciai was actually able to obtain long-term financing at the ABI rate.

Valbruna has asked the Department to use as its long-term benchmark rate, the interest rate it pays on three-month loans which it rolls over at the end of every quarter. Valbruna suggests that large Italian companies prefer loans with this three-month EURIBOR rate rather than with ABI prime rates because they allow the company to borrow money in Italian lire or Euros at an effective rate below the ABI prime rate. The interest rate on these loans is equal to the three-month EURIBOR rate plus a small spread in the favor of the lending bank.

We have not used these rates as our long-term benchmark for Valbruna for the preliminary determination. First, we believe the three-month EURIBOR rate should be viewed as a short-term interest rate. Second, the fact that these quarterly loans are rolled over every quarter, and Valbruna treats these loans as long-term loans for its own purpose is not a sufficient reason to treat these loans as a substitute for an actual long-term loan. Rates on long-term loans and short-term loans may differ significantly. For instance, the rate on a long-term loan may be higher to adequately compensate the lender for the additional risk of default associated with lending money for a longer period of time. The quarterly loans received by Valbruna, while effectively resulting in a long-term loan for Valbruna, are, in reality, a series of short-term loans in which the risk of default can be regularly assessed. Presumably, at the end of every quarter and depending upon, *inter alia*, the risk of default at that time, the rate could be adjusted to account for increased or decreased risk or the loan could be canceled due to unacceptable risk. Consequently, we have preliminarily rejected the use of Valbruna’s interest rate on these quarterly loans as an appropriate long-term benchmark and have, instead, allocated non-recurring subsidies and calculated long-term loan benefits by using the rate described *supra*. Nevertheless, at verification, as time permits, we will examine the loan provisions of Valbruna’s quarterly loans and, more generally, the use of an EURIBOR rate as a substitute for the ABI rate.

For the years in which CAS/ILVA was uncreditworthy (see *infra* section on “Creditworthiness”), we calculated discount rates for uncreditworthy companies in accordance with 19 CFR section 351.524(c)(3)(ii). To construct these benchmark rates, we used the formula described in section 19 CFR section 351.505(a)(3)(iii), which requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the average cumulative default rate reported for the Caa to C-rated category of companies as published in Moody’s Investors Service, “Historical Default Rates of Corporate Bond Issuers, 1920–1997,” (February 1998). For the probability of default by a creditworthy company we used the average cumulative default rates reported for the Aaa to Baa-rated categories of companies as reported in this study.² *See Miscellaneous Information Memo* at Attachment 3.

In certain instances for CAS and Bedini, we needed short-term interest rates for Italian lire denominated loans. However, neither of these companies provided company-specific short-term rates. Therefore, as a benchmark, we relied on the average, short-term interest rate in Italy as reported in the International Financial Statistics (see *Miscellaneous Information Memo* at Attachment 6).

Certain loans received by CAS were variable-interest rate loans denominated in currencies other than in Italian lire. Similar to *Wire Rod*, we were unable to find long-term rates denominated in the appropriate currency in Italy. Nor were we able to find comparable long-term, variable-interest rates on such loans. Therefore, as in *Wire Rod*, for these loans we used the average yield-to-maturity on long-term bond rates in the country of the currency, as reported in the International Financial Statistics (see *Miscellaneous Information Memo* at Attachment 6).

Equityworthiness

In the case of a government equity infusion, the Department measures the benefit by examining the investment decision against the usual investment practice of a private investor. 19 CFR section 351.507(a)(1). Specifically, the Department will compare the purchase price paid by the government to prices

² Since publication of the *CVD Regulations*, Moody’s Investors Service no longer reports default rates for the Caa to C-rated category of companies. Therefore, for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service’s publication as of February 1998.

paid for new shares by private investors, if such prices exist. 19 CFR section 351.507(a)(2). If actual private investor prices are unavailable, the Department will determine the equityworthiness of a company at the time of the equity infusion. 19 CFR section 351.507(a)(3). Moreover, unless a company provides new information leading us to reconsider a previous finding of unequityworthiness, once a determination of unequityworthiness has been made for certain years, the Department's practice is to continue to find that company unequityworthy for those same years in subsequent cases. See, e.g., *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295, 37297 (July 9, 1993) ("*Certain Steel from Brazil*").

In *Wire Rod*, ILVA and its predecessors were found to be unequityworthy from 1985 through 1988, and from 1991 through 1992. 64 FR at 40477. No new information has been presented in this investigation to warrant a reconsideration of this finding. Therefore, based on this previous finding of unequityworthiness, in this investigation, we continue to find ILVA and its predecessors unequityworthy from 1985 through 1988, and from 1991 through 1992. CAS did not receive any equity infusions directly during these years and, thus, we do not need to make a decision as to its equityworthiness at this time.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. 19 CFR section 351.505(a)(4). Moreover, unless a company provides new information leading us to reconsider a previous finding of uncreditworthiness, once a determination of uncreditworthiness has been made for certain years, the Department's practice is to continue to find that company uncreditworthy in those same years in subsequent cases. See, e.g., *Id.*; *Certain Steel from Brazil*, 58 FR at 37297.

In *Wire Rod*, ILVA and its predecessors were found to be uncreditworthy from 1982 through 1993. 64 FR at 40477. No new information has been presented in this investigation to warrant a reconsideration of this finding. Therefore, based on this previous finding of uncreditworthiness, in this investigation, we continue to find ILVA and its predecessors uncreditworthy from 1982 through 1993. Thus, any benefits received by CAS or its

predecessors in these years have been determined using rates for uncreditworthy companies.

Also, in the *Initiation Notice*, the Department stated it would examine Falck's creditworthiness in 1993–1994 and Bolzano's creditworthiness in 1995–1996, if it was discovered that these companies received equity infusions, loans or loan guarantees in these years. Based on the responses, neither Falck nor Bolzano was approved for any loans or allocable subsidies during these years. Therefore, we have not examined these allegations of uncreditworthiness for these years.

I. Programs Preliminarily Determined to Be Countervailable

Government of Italy Programs

1. Capacity Reduction Payments Under Article 2 of Law 193/1984

Article 2 of Law 193/1984 ("Article 2") provided payments to companies in the private steel sector to achieve capacity reductions consistent with an agreement by the European Coal and Steel Community ("ECSC").

Valbruna and Bolzano (then owned by Falck) received funds under this program. However, the benefits were allocated over the 12-year AUL established in *Wire Rod* and, consequently, the benefit stream lapsed prior to the POI. Similarly, Foroni reported receiving Article 2 grants, but the benefits from these grants would have been fully allocated prior to the POI. Therefore, no benefit accrued to Foroni in the POI. Only Rodacciai reported benefitting from Article 2 grants during the POI.

In *Wire Rod*, we found Law 193/1983 to be specific and to provide a financial contribution that conferred a countervailable benefit. 64 FR at 40479. No information has been presented in this investigation to warrant a reconsideration of this finding.

To calculate the subsidy rate, we allocated the grants received by Rodacciai over the AUL and then divided the benefit attributable to the POI by Rodacciai's total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.02 percent *ad valorem* exists for Rodacciai.

2. Law 451/94 Early Retirement Benefits

Passed in 1994, Law 451/94 enabled workforce reductions in the Italian steel industry by allowing workers to retire early. The law authorized early retirement for men at least fifty years of age and women at least forty-seven years of age, and who met certain minimum social security contribution

requirements. Benefits were applied for between 1994 to 1996 and, upon early retirement, workers received benefits until their normal ages of retirement, for a maximum of ten years. When workers reached their normal ages of retirement, the company's planned retirement benefits would begin and Law 451/94 benefits would end.

In our previous investigations, we found assistance under Law 451/94 to be specific and to provide a financial contribution that conferred a countervailable benefit. *Id.* No information has been presented in this investigation to warrant a reconsideration of this finding.

In this investigation, pursuant to 19 CFR section 351.513(c) and consistent with previous determinations, we have treated benefits received under Law 451/94 as recurring grants to be expensed in the year of receipt. Moreover, consistent with our previous determinations, we treated one-half of the government payments as benefitting the respondent. See, e.g., *Plate in Coils*, 64 FR at 15515; *Sheet and Strip*, 64 FR at 30629; *CTL Carbon Plate*, 64 FR at 73253. See also *Preamble*, 63 FR at 65380.

Only Valbruna and Italfond reported that some of their employees retired early under this program. However, both companies also reported that several employees had reached their normal retirement age prior to the POI. Therefore, these employees are no longer receiving early retirement benefits under Law 451/94 and are instead receiving their normal retirement benefits from the respondent.

To calculate a subsidy rate, we first deducted these employees from the total number of employees who were approved to receive benefits during the application period, 1994 to 1996. The resulting number (*i.e.*, the number of employees who retired early and continued to receive Law 451/94 benefits in the POI), categorized by employee type (*i.e.*, blue collar, white collar, and senior executive), was multiplied by their respective average salary during the POI. Because the GOI made payments to these workers equaling eighty percent of their salary, we find forty percent of this amount benefitting the respondent. We then divided this benefit by each recipient respondent's respective total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.13 percent *ad valorem* exists for Valbruna and 0.18 percent *ad valorem* exists for Italfond.

3. Law 10/91

Under Law 10/91, the GOI provides funds for the development of energy conserving technology. Law 10/91 authorized grants based on applications submitted in 1991 and 1992. The GOI reported that CAS was the only respondent receiving benefits under this program during the POI.

In *Plate in Coils*, the Department found the aid provided under this program constituted a financial contribution and provided a benefit in the amount of the grants received. 63 FR at 15514. The Department also determined Law 10/91 to be *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act because ILVA (of which CAS was a part of at the time), received a disproportionate share of the benefits. *Id.* Thus, Law 10/91 was found to be countervailable. *Id.* No information has been presented in this investigation to warrant a reconsideration of these findings.

Because each grant under this program required separate approval, we find the benefits under this program to be non-recurring. To calculate the subsidy rate, we allocated the grants received by CAS over a 15-year AUL, and divided the benefit attributable to the POI by CAS' sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.15 percent *ad valorem* exists for CAS.

4. Law 549/95

Law 549/95 provided tax relief on fifty percent of reinvested profits to all companies, except banks and insurance companies, located in areas specified in EEC Regulation No. 2052/88 for the tax year 1996. The amount of profit that could be excluded was limited to the amount of investment exceeding the average amount of investments carried out during the five previous tax years. Qualified investments under Law 549/95 included investments in new plants, the extension and modernization of existing establishments, and the purchase of new capital goods, including capital goods acquired through leasing contracts.

The EC has required that benefits received by certain companies under Law 549/95 be repaid. Steel companies, in particular, were required to repay their benefits because Law 549/95 was found not compatible with Article 4 of the ECSC Treaty, (*Commission Decision on State Aid Granted by Italy by Way of Tax Relief under Law No 549/95*, OJ L 47/6 (February 23, 1999)). Pursuant to the EC decision, on February 26, 2001, the GOI issued a Notice of

Ascertainment requiring repayment of funds disbursed under this program. However, the GOI reported that neither Bedini nor CAS has yet paid back these benefits. Furthermore, the GOI reported that, on April 24, 2001, CAS filed an appeal to the Notice of Ascertainment.

Because the GOI has forgone or not collected revenue otherwise due, we find that the exemptions provided by Law 549/95 constitute financial contributions within the meaning of section 771(5)(D)(ii) of the Act. Even if the companies must repay these tax savings in the future, the GOI is forgoing revenue because it is essentially financing, from the time of their receipt and at zero interest, the tax benefits to be repaid. Also, because Law 549/95 benefits are available only to companies located within certain areas, we preliminarily find that these funds are specific under section 771(5A)(D)(iv) of the Act.

To determine the benefit to CAS and Bedini under this program, we have recognized the EC has ordered repayment and the GOI has taken steps to recover the amounts (GOI, *Ministry of Finance Circular n. 218/E* (September 15, 1998)). Consequently, we are treating the tax these companies owe as short-term, zero-interest-rate loans, being rolled over each year until repayment. This is consistent with our previous findings where the EC has ordered repayments and, in compliance, the GOI has instituted procedures to recover payments. See *Certain Steel Products from Germany; Final Affirmative Countervailing Duty Determinations*, 58 FR at 37316-19 (July 9, 1993). Thus, a benefit to CAS and Bedini exists to the extent the amount paid on these government "loans" is less than the amount the firms would pay on a comparable commercial loan. 19 CFR section 351.505(a).

We used the short-term interest rate described in the section on "Subsidies Valuation Information: Benchmarks for Loans and Discount Rates" to determine what the respondents would have paid on a comparable commercial loan. This benefit was then divided by the respondents' total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.01 percent *ad valorem* exists for Bedini and 0.14 percent *ad valorem* exists for CAS.

Government of Bolzano Subsidies

5. Province of Bolzano Law 25/81, Articles 13 Through 15

Articles 13 through 15 of Law 25/81 ("Articles 13 through 15") are general aid measures providing grants to

companies with limited investments in technical fixed assets and targeting technological investment, environmental investment, or restructuring projects. In *Wire Rod*, we found that "Article 13 through 15 establish different eligibility requirements, different application procedures, different levels of available aid, and different types of aid (grants and loans) than assistance provided under other Articles of Law 25/81." 64 FR at 40486. Therefore, we considered assistance provided under Articles 13 through 15 separately from other assistance provided under Law 25/81.

In *Wire Rod*, we found Articles 13 through 15 to be specific and to provide a financial contribution that conferred a countervailable benefit. *Id.* No information has been presented in this investigation to warrant a reconsideration of this finding.

On July 17, 1996, the EC issued a decision, C(96) 2064, finding the aid granted under Law 25/81 to be illegal and ordering recovery of any amounts disbursed. This decision, however, "grandfathered" any aid approved prior to January 1, 1986 (*i.e.*, aid approved prior to this date did not have to be repaid). Bolzano received two grants under this program prior to January 1, 1986, which were grandfathered, and two loans and two grants after January 1, 1986, which were not grandfathered. All of these grants and loans were previously investigated in *Wire Rod. Id.* at 40485-46.

Regarding the two grants and two loans received after January 1, 1986, Falck (the prior owner of Bolzano) agreed to indemnify Valbruna for any negative consequences resulting from the EC investigation. To carry out its obligation, Falck repaid the funds, but decided to appeal the EC decision requiring repayment. In December 1999, subsequent to *Wire Rod*, the EC rejected Falck's appeal. Falck filed a second appeal of the EC decision to the European Court of Justice ("ECJ") on March 2, 2000. According to Valbruna, this is the last possibility of appeal for Falck. Valbruna further claims the possibility of success in this second appeal is highly unlikely because an appeal to the ECJ requires a showing that the judgement by the lower court, the Court of First Instance ("CFI"), contained an error of law. In fact, Valbruna claims no appeal concerning state aids to the steel sector has ever been successful since the formation of the CFI in 1989.

In *Wire Rod*, the Department countervailed the benefits received under this program because Falck was still in the process of appealing the EC

decision during the POI in that case, and it was unclear at the time whether Falck would be successful. *Id.* However, we stated in *Wire Rod* that we would reconsider this issue once a final judgement had been rendered in the appeal taking place at the time. *Id.* For purposes of this investigation, we preliminarily determine that the facts have changed sufficiently from *Wire Rod* to allow us to conclude that the assistance provided to Bolzano after January 1, 1986, should not be countervailed. The funds have already been repaid by Falck and Falck lost the appeal pending during *Wire Rod*. Given the diminished prospects for Falck to recover the amount it has repaid, we preliminarily determine that there is no benefit to Bolzano or Valbruna from the grants and loans received under this program after January 1, 1986. If Falck does prevail in its second appeal and the monies it has repaid are refunded, it would be appropriate at that time to consider whether a benefit exists.

Regarding the two grandfathered grants received before January 1, 1986, these grants were disbursed to Bolzano in semi-annual installments until December 1992 for one grant and June 1990 for the other. Consistent with *Wire Rod*, because these grants required separate approvals, we are treating them as non-recurring benefits. *Id.* Also, because grants received under this program were allocated over a 12-year AUL in *Wire Rod*, we have continued to use the 12-year AUL period.

To determine the subsidy rate, we divided the amounts allocated to the POI by Valbruna's total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.11 percent *ad valorem* exists for Valbruna.

Regional Government of Valle D'Aosta Subsidy Programs

6. Valle D'Aosta Regional Law 12/87

Law 12/87 of the Autonomous Region of Valle d'Aosta ("Regional Government") provides grants for the promotion of commercial activities of local firms in other regions of Italy and abroad. Support is provided to companies for participation in shows, fairs, and exhibitions in Italy and abroad, and for participation in commercial delegations abroad. Companies apply for funding for up to thirty percent of the costs of promotional activities in Italy (up to ten million lire) and forty percent of the costs of promotional activities abroad (up to fifteen million lire).

In *Wire Rod*, we found Law 12/87 provides a financial contribution within

the meaning of section 751(5)(D)(1) of the Act. *Id.* at 40483. We also determined this program constitutes an export subsidy because, although the program is available for promotional activities both within and outside Italy, we found the grants were only given for export-related promotion activities. *Id.* The Regional Government did not submit any information indicating that the nature of the grants received by CAS in the POI has changed since *Wire Rod*. Therefore, we continue to find this program provides a countervailable benefit.

In *Wire Rod*, we found these grants to be non-recurring because they are exceptional and require separate government applications and approval. *Id.* However, the grants examined in that investigation (*i.e.*, those disbursed prior to and during the POI) were expensed in the year of receipt. Therefore, we are not including those grants in our calculation.

Similarly, all grants received since *Wire Rod* have been less than 0.5 percent test of CAS' export sales in their respective years of approval. Therefore, the benefits were expensed in their respective year of receipt. For the amount approved and received in the POI, we divided the benefit by CAS' export sales in the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.01 percent *ad valorem* exists for CAS.

European Union Subsidies

7. ECSC Article 54 Loans

ECSC Article 54 Loans ("Article 54") were made to steel undertakings to carry out the investment programs established under the ECSC Treaty. These loans finance the purchase of new equipment modernization, and are made at interest rates slightly higher than the rates obtained by the EC. The loans cannot exceed fifty percent of the underlying eligible investment.

In *Wire Rod*, we found Article 54 loans to be specific and to provide a financial contribution that conferred a countervailable benefit. *Id.* at 40486. No information has been presented in this investigation to warrant a reconsideration of this finding.

Valbruna, Bolzano, and CAS received Article 54 loans. However, Valbruna's and Bolzano's loans were repaid prior to the POI. Thus, they received no benefit during the POI. However, according to the EC response, CAS did have Article 54 loans outstanding during the POI. As facts available, we are using the information provided by the EC to calculate a subsidy rate for CAS. These loans were variable-interest-rate loans

and certain of these loans were denominated in currencies other than the Italian lire.

To calculate a subsidy rate, we first compared the cost of the benchmark financing for each loan to the financing CAS received under this program and found the loans provided a financial contribution with the meaning of section 771(5)(D)(ii) of the Act. We then calculated the difference during the POI between the interest actually paid and the interest that would have been due on the benchmark loan. Finally, we divided this benefit by CAS' total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.26 percent *ad valorem* exists for CAS.

8. European Social Fund

The European Social Fund ("ESF"), one of the Structural Funds operated by the EC, was established in 1957 to improve workers' employment opportunities and to raise their living standards. The main purpose of the ESF is to make employing workers easier and to increase the geographical and occupational mobility of workers within the European Union ("EU"). It accomplishes this by providing support for vocational training, employment, and self-employment.

Like the other EC Structural Funds, ESF seeks to achieve six different objectives explicitly identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions; Objective 2 is to assist areas in industrial decline; Objective 3 is to combat long-term unemployment and to create jobs for young people, and people excluded from the labor market; Objective 4 is to assist workers adapting to industrial changes and changes in production systems; Objective 5 is to promote rural development; and Objective 6 is to aid sparsely populated areas in northern Europe.

The EU Member States are responsible for the identification of projects to receive ESF financing and their subsequent implementation. The Member States must also contribute to the financing of the projects. In general, the maximum benefit provided by ESF is 50 percent of the total cost of projects geared toward Objectives 2, 3, 4, and 5b, and 75 percent of the project's total cost for Objective 1 projects. For Objective 4 programs implemented in Italy, generally 45 percent of the funding is provided by the EC and 35 percent by the GOI (under the auspices of the Rotation Fund). Companies usually receive 50 percent of the aid up-front

and the remainder upon satisfactory completion of the training program.

According to the questionnaire responses, the following respondents received or benefitted from ESF grants: CAS, Valbruna, Rodacciai and Bedini. We find these grants to constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act.

All of these grants were given for Objective 4 projects involving worker assistance in the form of employee training. The Department considers worker assistance programs to provide a benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. 19 CFR section 357.513(a). Generally, only limited information was provided in the questionnaire responses about the purpose of these grants. However, one respondent, Bedini, reported that its ESF grants were used to train its employees in the "technical and scientific aspects of steel production, * * * the sales and distribution of steel products, * * * and the general activities of the company, i.e., technical personnel were trained about the technical aspects of production." Bedini's May 14, 2001 supplemental response at S-7. Moreover, in general, the respondents provided insufficient information regarding the nature and extent of their normal vocational training programs and job-skills enhancement practices (i.e., the sorts of training and skills enhancement normally taking place in the absence of ESF assistance).

We intend to examine this issue more closely at verification, time permitting. However, because companies normally incur the costs of training to enhance the job-related skills of their own employees, and because the limited record information suggests that these ESF training programs were related to the operations of the respondents, in lieu of more detailed information to the contrary we preliminarily determine these ESF grants have relieved the recipient respondents of obligations that they otherwise would have incurred. Accordingly, we determine the ESF grants received by CAS, Valbruna, Rodacciai and Bedini provided a benefit under section 771(5)(E) of the Act to each recipient in the amount of the respective grant.

Regarding the specificity of benefits under this program, neither the EC nor the GOI has provided us with detailed industry and regional distribution information on Objective 4 grants in Italy, despite our explicit request for such information in the questionnaires and supplemental questionnaires.

Therefore, we find it appropriate to apply an adverse inference and conclude that these grants are specific under section 771(5A) of the Act.

Based on the foregoing, we find the ESF grants to CAS, Valbruna, Rodacciai and Bedini to be countervailable subsidies.

The Department normally considers the benefits from worker-training programs to be recurring. 19 CFR section 351.524(c)(1). However, we found in *Wire Rod*, that ESF grants relate to specific, individual projects and we treated them as non-recurring grants because each grant required separate government approval. 64 FR at 40488; 19 CFR section 351.524(c)(2)(ii). In this investigation, because the amount of ESF funding approved for each recipient was less than 0.5 percent of the recipient's sales, we have expensed all reported ESF grants received in the year of receipt for all recipient respondents. Because Bedini did not receive any ESF grants in the POI, we found the program not used for Bedini. For the remaining recipients, we divided the amount of ESF grants received by each recipient in the POI by that recipient's total POI sales. Accordingly, we preliminarily determine that the following *ad valorem* rates exist for CAS, Valbruna, and Rodacciai, respectively: 0.11 percent, 0.01 percent, and 0.05 percent.

Company-Specific Subsidies Conferred by the Government of Italy

9. Restructuring Subsidies Provided to the Italian Steel Industry Attributable to CAS

A. Equity Infusions to Finsider and ILVA

Because CAS did not respond to our questionnaire in this investigation, we relied on information from the GOI and *Wire Rod* to determine the amount of equity infusions benefitting CAS during the POI. Both the GOI and *Wire Rod* indicated the GOI provided equity infusions to Finsider up to 1988 and to ILVA in 1991-1992. However, because we allocated these benefits over a 12-year AUL in *Wire Rod*, the benefits provided to Finsider have been fully accounted for prior to the POI. Thus, we preliminarily find only the equity infusions made to ILVA in 1991-1992 continue to benefit CAS during the POI.

As in *Wire Rod*, we find the GOI's equity infusions in ILVA were specific and provided a financial contribution which conferred a benefit upon CAS. Under our new change-in-ownership methodology (see *supra* section on "Changes in Ownership") and, as facts available, we find CAS to be the same

entity as its predecessor (see *supra* section on "Use of Facts Available"). Accordingly, the equity infusion received by the predecessor entity continues to fully benefit CAS.

To calculate CAS' share of these infusions in the larger company, ILVA, we divided the value of CAS' assets in 1991 and 1992 by the total value of ILVA's assets in 1991 and 1992, respectively. These ratios were then applied to the 1991 and 1992 equity infusion received by ILVA to determine the amount ultimately attributable to CAS.

Consistent with *Wire Rod*, the equity subsidies were allocated over a 12-year AUL to determine the benefit during the POI. In addition, because ILVA was uncreditworthy at the time it received the equity infusion, this allocation was made using a discount rate for uncreditworthy companies (see *supra* section on "Subsidies Valuation Information: Benchmarks for Loans and Discount Rates.") We then divided the benefit in the POI by CAS' total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.61 percent *ad valorem* exists for CAS.

B. Pre-Privatization Assistance and Debt Forgiveness

In *Wire Rod*, we determined the following:

Cogne S.p.A. acquired the shares of Robles S.r.l. and changed the company's name to [CAS], in 1992. * * *

At the end of 1992, Cogne S.p.A. transferred most of the productive assets of the Aosta facility to CAS through the capital contribution procedure under Italian law. Under this procedure, Cogne S.p.A. had assets (and liabilities) assessed under the oversight of the Italian Court and contributed them to CAS in exchange for shares in CAS worth exactly the net value of the contribution. CAS officials explained that pursuant to the capital contribution, CAS received the liabilities associated with the production process, while Cogne S.p.A. retained the other liabilities which were mostly long-term. From that point, CAS became the operating company and Cogne S.p.A. entered into liquidation. * * *

As of December 31, 1993, ILVA S.p.A. issued a guarantee on behalf of Cogne S.p.A. for the uncovered liabilities of the firm, and the anticipated costs of the liquidation process, for 380 billion lire. * * *

ILVA [was then divided] into three companies: ILVA Laminati Piani, Acciai Speciali Terni, and ILVA in Liquidazione. * * * ILVA in Liquidazione, retained responsibility for all of the ILVA entities which could not be sold to private parties. * * * The estimated costs of the liquidation, 10 trillion lire, covered all of the ILVA companies including the subsidiaries. The costs associated with the liquidation of

Cogne S.p.A. were included in that total.

* * *

64 FR at 40478–40479 (citations omitted).

Because CAS did not respond to our questionnaire in this investigation, we relied on information from the GOI and *Wire Rod* to determine the amount of pre-privatization assistance and debt forgiveness benefitting CAS during the POI.

As in *Wire Rod*, we continue to find the GOI, in making available this pre-privatization assistance and debt forgiveness, provided a financial contribution which was specific and conferred a benefit upon CAS in the amount of Cogne S.p.A.'s total liabilities and losses assumed by ILVA. Following the methodology used in *Wire Rod* to calculate the subsidy rate, we used a discount rate for uncreditworthy companies, as described *supra* in the section on "Subsidies Valuation Information: Benchmarks for Loans and Discount Rates," to allocate the benefits over a 12-year AUL. We then divided the benefit attributable to the POI by CAS' total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 10.12 percent *ad valorem* exists for CAS.

Company Specific Subsidies Conferred by the Provincial Government of Bolzano

10. Province of Bolzano Assistance

A. Lease of Bolzano Industrial Site to Valbruna

Falck sold Bolzano to Valbruna in 1995. Concurrent with the change in ownership, Falck and Bolzano sold Bolzano's industrial site to the Province of Bolzano ("Province"). The Province paid for the property in full. At the same time, Valbruna negotiated with the Province to lease the Bolzano industrial site and, on July 31, 1995, signed a thirty-year lease. During the first two years of the lease, Valbruna paid rent by absorbing environmental remediation and initial extraordinary maintenance costs.

Although the Province provided some information on the market for industrial property, apparently very little industrial property is available in the Province. Valbruna and the Province provided some information on leases between the Province and other private parties; however, the amount of property covered by these leases is much smaller than that covered by the Valbruna lease and, therefore, inappropriate for comparison purposes. In any event, we do not find these leases to represent a market-determined

negotiation between private parties because the rents are set by law at 4.0 percent per annum of each property's net purchase price.

Consistent with *Wire Rod*, we determine that the Province has provided a financial contribution with the meaning of section 771(5)(d)(3). We further determine that the Province's provision of this lease is specific because it is limited to Valbruna.

In determining the existence and amount of the benefit, we have compared the average annual return on industrial leased property in Italy during the POI to the rent paid by Valbruna during the POI. This comparison indicates that Valbruna received a benefit in the amount of the difference.

Valbruna has suggested we account for the extraordinary maintenance expenses it incurred during the POI. We preliminarily decline to do so. Although the Italian Civil Code obliges a landlord to pay for extraordinary maintenance, such as environmental remediation, this obligation may be passed to the lessee. Evidence on the record in *Wire Rod* indicated long-term leases, such as the one negotiated between Valbruna and the Province, often require the lessee to take responsibility for extraordinary maintenance. *Id.* at 40481. We specifically found the extraordinary maintenance costs would have been assigned to the lessee by a commercial landlord. *Id.* at 40484. Therefore, consistent with *Wire Rod*, we find the average rate of return on commercial leases remains an appropriate benchmark, without any adjustments for such costs. However, we will examine this issue further at verification, time permitting.

To calculate the subsidy to Valbruna during the POI, we divided the benefit (*i.e.*, the difference between the average rate of return on leased commercial property in Italy during the POI and the actual rent paid by Valbruna during the POI) by Valbruna's total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.15 percent *ad valorem* exists for Valbruna.

B. Environmental and Research and Development Assistance to Bolzano Under Law 25/81

Valbruna reported receiving two grants under Law 25/81 for the adaptation of existing facilities to new environmental requirements ("environmental grants"). As discussed *supra*, we found assistance provided under Article 13 through 15 of Law 25/81 to be countervailable in *Wire Rod*. Environmental grants were not

investigated in *Wire Rod* and it is not clear which Article of Law 25/81 authorizes these environmental grants. For the preliminary determination, we have treated the environmental grants as being distinct from Articles 13 through 15 grants.

Although we received general information on the maximum amount of benefits green-lighted by the EU, the Province provided insufficient information regarding the specificity (particularly, *de facto* specificity) of the environmental grants. Lacking this information, we are drawing an adverse inference and, as facts available, we preliminarily determine the environmental grants are specific within the meaning of section 771(5A)(D)(iii) of the Act.

The two grants received by Valbruna under this program were approved in 1998. To calculate the benefit during the POI, we allocated these grants over Valbruna's AUL and divided the benefit attributable to the POI by Valbruna's total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.20 percent *ad valorem* exists for Valbruna.

Company-Specific Subsidies Conferred by the Regional Government of Valle D'Aosta

11. Valle D'Aosta Regional Assistance Associated With the Sale of CAS

In *Wire Rod*, we found the following fact pattern:

[W]hen CAS was privatized, the land and buildings were sold to the Autonomous Region of Valle d'Aosta which now leases back the facility to the new owners of CAS. The framework for this triangular transaction among ILVA, CAS, and the Region was established through the protocols of agreement signed November 19, 1993. The Region * * * agreed to (1) purchase the land, including the hydroelectric facilities owned by ILVA Centrali Elettriche S.p.A. (ICE) * * *, (3) to cover the costs of environmental reclamation on the land * * *, and (4) to supply electricity directly to CAS from the ICE plants. In exchange, ILVA agreed to transfer CAS to a private party by December 31, 1993, with a restructuring fund. The purchaser of CAS's shares agreed to (1) vacate and abandon areas of the property not used in production activity; and, (2) to guarantee positions for 800 employees after the privatization.

Id. FR at 40480.

A. Lease of Cogne Industrial Site

In *Wire Rod*, we determined the following facts regarding the lease of the Cogne industrial site:

After the purchase of the land and buildings, Struttura Valle d'Aosta S.r.l. (Structure), a company wholly-owned by the Region, assumed the lease that had been

between Cogne S.p.A. and CAS for the use of the site until a new lease could be negotiated. In 1996, Structure and CAS entered into a thirty-year lease for the facility which produces subject merchandise. The new lease implements the commitments set forth in the protocols of agreement: the facility is leased to CAS; CAS undertakes all maintenance on the facility (including extraordinary maintenance); and CAS commits to vacate approximately 50 percent of the property in favor of the Region. The lease was also designed to provide for the stable employment of 800 employees at the facility. * * *

The record evidence indicates that the average rate of return on leased commercial property in Italy is 5.7 percent. * * * As an average, this rate reflects different terms, lengths, and locations of lease contracts throughout Italy. * * *

In applying the 5.7 percent rate, we have determined that no adjustments to this rate are warranted for either depreciation or extraordinary maintenance payments. * * *

Id. FR at 40481 (citations omitted).

Consistent with *Wire Rod*, we determine that the Regional Government has provided a financial contribution within the meaning of section 771(5)(d)(iii). We further determine that the Regional Government's provision of this lease is specific because it is limited to CAS.

In determining the existence and amount of the benefit, we have compared the average annual return on industrial leased property in Italy during the POI to the rent paid by CAS during the POI. This comparison indicates that CAS received a benefit in the amount of the difference.

To calculate the subsidy to CAS during the POI, we divided the benefit (*i.e.*, the difference between the average rate of return on leased commercial property in Italy during the POI and the actual rent paid by CAS during the POI) by CAS' total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.19 percent *ad valorem* exists for CAS.

B. Waste Plant

In *Wire Rod*, we determined this program did not exist because, at the time, construction of the waste plant had not yet begun. *Id.* at 40482. We stated, however, we would continue to review this program in the future to determine if waste disposal services were being provided for less than adequate remuneration. *Id.*

In the original protocol agreement between the Regional Government and the purchaser of CAS, the Regional Government stated it would construct, under its own responsibility and at its own expense, a waste disposal area suitable for receiving and processing

waste. Construction of the waste plant was reportedly begun on November 15, 1995, with completion expected on May 13, 2001. Therefore, during the POI the waste plant was still under construction.

On October 11, 1999, the Regional Government enacted Decision 3502, "Payment to Cogne Acciai Speciali of the Higher Costs Incurred For Disposal In Waste Treatment Plants Of Its Steelworks Waste Until Such Time That The Pontey Waste Disposal Plant Becomes Available," as part of Regional Law 4 dealing with the Cogne industrial site. Under this Decision and beginning in September 1999, the Regional Government has been making payments to CAS to offset costs incurred in removing CAS' waste to facilities located outside the region.

We preliminarily determine that the payments to CAS are a financial contribution within the meaning of 771(5)(D)(i) of the Act and that the benefit is the amount of the grant. No information exists on the record indicating that any other companies have received similar payments. Accordingly, we find these payments to be specific within the meaning of section 771(5A)(D) of the Act. Based on the foregoing, we find these benefits to constitute a countervailable subsidy.

The Regional Government calculated the cost to transport CAS' waste outside the region at twenty-six lire per kilogram of waste and estimated a maximum waste production of 50,000,000 kilograms per year. Therefore, the maximum amount of the grant would not exceed 1,300,000,000 lire. Because we have no information regarding the actual amount that CAS received during the POI, we have based our calculations, as facts available, on the estimated, maximum yearly payment.

For purposes of this preliminary determination, we are treating these payments as recurring subsidies. We have done this because these payments are being made in lieu of a service that the Regional Government obligated itself to provide and, hence, the payments are like the recurring subsidies described in 19 CFR section 351.524(c)(1).

To calculate the subsidy to CAS, we divided the maximum payment to CAS by CAS' total sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.35 percent *ad valorem* exists for CAS.

C. Loans to CAS To Transfer Its Property

In *Wire Rod*, we determined that the Regional Government agreed to finance

the cost of transferring CAS' property off the portion of the site not subject to the lease. *Id.*

In this investigation, the GOI confirmed that CAS received three separate loans under this program to transfer its property. In *Wire Rod*, we found these loans to be specific and to provide a financial contribution that conferred a countervailable benefit. *Id.* No information has been presented in this investigation to warrant a reconsideration of this finding. In this investigation, we calculated the benefit in the same manner as in *Wire Rod*, *i.e.*, as the difference between the interest that CAS would have paid on a comparable commercial loan and the amount actually paid.

In addition to the preferential interest rate, CAS was relieved of making certain payments on those loans during the POI. Because of severe flooding in the region during October 2000, the Regional Government passed Decision 44 in January of 2001. Decision 44 cancelled the interest CAS had due in November 2000, and deferred the principal portion of the November 2000 payment for two to three payment periods. According to the Regional Government, Decision 44 applied to companies that suffered damage to property or equipment covered by "easy-term" loans obtained through the Region's rotating funds (including Regional Law 37, the law under which CAS received its loans). However, the Regional Government did not provide information to substantiate its claim regarding the availability of Decision 44 benefits to a wide range of companies or its use by multiple and various companies. Thus, as facts available, we find the interest cancellation and principal deferral to be *de facto* specific, and to constitute a financial contribution under section 771(5A) and 771(5)(D) of the Act, respectively.

To calculate the subsidy to CAS for the May 2000 payment, which was made on time, we divided the difference between the interest due on the benchmark loan by the interest actually paid by CAS by CAS' total sales during the POI.

Regarding the cancellation of the interest payment, we consider this to be debt forgiveness and, as such, a benefit exists at the time of forgiveness equal to the amount of interest the government has forgiven. 19 CFR section 351.508(a). This benefit is treated as a non-recurring subsidy and allocated over the company's AUL. 19 CFR section 351.508(c). However, because this amount is less than 0.5 percent of CAS' sales during the POI, we expensed the full amount of the benefit in the POI.

We calculated the subsidy rate by dividing the benefit by CAS' total sales during the POI.

Regarding the deferral of principal payments, because CAS will have to repay these funds eventually, we consider this a short-term, zero-interest loan for the duration of the deferral. To calculate a subsidy rate, we used the short-term interest rate (see *supra* section on "Subsidies Valuation Information: Benchmarks for Loans and Discount Rates") in determining the difference between what would have been paid on a comparable commercial loan and what was actually paid. We then divided this amount by CAS's total sales during the POI.

Accordingly, for the May 2000 loan payment, the cancellation of the November 2000 interest payment, and the deferral of the November 2000 principal payment, we preliminarily determine that a countervailable benefit of 0.64 percent *ad valorem* exists for CAS.

II. Programs Preliminarily Determined To Be Not Countervailable

Company Specific Subsidies Conferred by the Provincial Government of Bolzano

1. Environmental and Research and Development Assistance to Bolzano Under Law 44/92

Law 44/92 is aimed at promoting technological innovation and research and development within the Province. Article 3 of Law 44/92 allows for the provision of loans at reduced rates. In 1999, Valbruna received a long-term, fixed-rate, low-interest loan under this program in order to finance a research and development program on ultra-clean stainless steels and alloys.

Section 771(5A)(D) of the Act requires domestic subsidies be specific in law or in fact in order to be countervailable. Eligibility for Law 44/92 does not appear to be (1) contingent in law or fact on export performance, (2) contingent on the use of domestic rather than imported goods, or (3) a domestic subsidy within the definition of section 771(5A)(D) of the Act. Instead, we find the record evidence in this investigation indicates that loans under Law 44/92 were widely and evenly distributed with no one sector or enterprise receiving a disproportionate amount. As a result, we preliminarily determine the loan received by Valbruna under Law 44/92 is not specific within the meaning of Section 771(5A) of the Act and, thus, not countervailable.

IV. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses, we determine no responding companies applied for or received benefits under the following programs during the POI:

Government of Italy Programs

1. Capacity Reduction Payments Under Articles 3 and 4 of Law 193/1984

While several respondents received interest payment grants under Article 3, for all of these respondents, either the grant was not greater than 0.5 percent of the respective company's total sales or the underlying loans over which we would allocate the grant were fully repaid prior to the POI. Falck is the only company reported as having received funds under Article 4. However, these benefits to Falck were fully allocated in *Wire Rod* prior to the POI. Accordingly, no respondent benefitted from Article 3 or 4 benefitted during the POI.

2. Law 796/76 Exchange Rate Guarantees

3. Article 33 of Law 227/77, Export Credit Financing Under Law 227/77, and Decree Law 143/98

4. Grants under Laws 46/82 and 706/85

5. Law 181/89 and Law 120/89

Law 181 was implemented to ease the impact of employment reductions in the steel crisis areas of Naples, Taranto, Terni, and Genoa. The law targeted four activities: (1) Promotion of investment in reindustrialization, (2) promotion of employment, (3) promotion of worker retraining, and (4) early retirement. Rodacciai is the only company that reported receiving benefits under this program. Arguing it was the workers themselves that directly received any benefits from this program, and not the company, Rodacciai did not report the amount of benefits provided under this program. However, Rodacciai did report, to the best its knowledge, that its workers received benefits under this program in 1996.

We have previously found this program provides a countervailable benefit. *Preliminary Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy* 59 FR 4682, 4688 (February 1, 1994) ("*GOES Prelim*").

Although Rodacciai did not provide specific information regarding the amount of benefits received under this program, Rodacciai did state its workers received benefits in 1996. Because we find Law 181, consistent with the *GOES Prelim*, to provide recurring benefits, any benefits actually received would

have been expensed fully in the year of receipt, 1996. Therefore, while we preliminarily find no benefits were received in the POI, we intend to examine this issue further at verification to determine, *inter alia*, whether any benefits were actually received during the POI.

Finally, we note Law 181 is the enactment by the Italian Parliament of Decree Law 120. Once enacted into a Law, a Decree Law no longer exists. Therefore, Decree Law 120 no longer exists.

6. Law 488/922, Legislative Decree 96/93 and Circolare 38522

7. Law 341/95 and Circolare 50175/95

8. Law 675/77

A. Interest Grants on Bank Loans

B. Mortgage Loans

C. Interest Contribution on IRI Loans

D. Personnel Retraining Aid

9. Law 394/81 Export Marketing Grants³

Law 394/81 provides low-interest rate loans to finance up to 85 percent of the cost of investment projects by Italian companies seeking to develop or increase a presence in markets outside of the EU. According to the questionnaire responses of the respondents and the GOI, Valbruna is the only respondent that received funds under this law. According to Valbruna, it received a loan under this program during the POI to create a distribution subsidiary in Mexico. Further, according to Valbruna, this subsidiary will distribute merchandise only in the Mexican market and not for sales to the United States. Therefore, consistent with our approach when investigating a similar export marketing program in *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288, 30293 (June 14, 1996) (regarding "Export Marketing Grants Under Law 304/90"), we preliminarily determine any benefit from this program to be tied to Valbruna's Mexican sales and, accordingly, find that this program did not benefit Valbruna's POI sales of subject merchandise to the United States.

10. Law 481/94 (and Precursors) Grants for Reduced Production

11. Law 489/94

Valbruna initially reported receiving benefits under Law 549/95. However, in supplemental responses, Valbruna and the GOI indicated these benefits were

³ In the *Initiation Notice*, we referred to this program as "Law 394/81 Export Marketing Grants". However, Valbruna and the GOI have indicated that only loans, not grants, are provided under this law.

actually received under Law 489/94. According to Valbruna, Law 489/94 was generally available to all businesses in Italy and provided tax relief on fifty percent of the amount a company's 1995 investments in tangible fixed assets exceeded the average investment of the previous five years. Unlike Law 549/95, no evidence exists on the record of this investigation indicating relief provided under Law 489/94 will be repaid.

Assuming arguendo this program is countervailable, an exemption or remission of a direct tax is considered as "having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return." 19 CFR section 351.509(b).

Because the tax return reflecting any benefit under Law 489/94 was filed prior to the POI and, hence, any benefit would be attributed to Valbruna prior to the POI, we have not analyzed this program further.

Regional Government of Valle D'Aosta Subsidy Programs

12. Valle D'Aosta Regional Law 64/92

In *Wire Rod*, benefits received under this program were found to be less than 0.5 percent of CAS' sales during the POI, the year of approval and, thus, were expensed in the year of receipt. 64 FR at 40483. According to the Regional Government of Aosta, CAS received no new amounts under this programs since the POI covered by *Wire Rod*.

European Union Subsidies

12. ECSC Article 56 Conversion Loans, Interest Rebates, and Restructuring Grants

13. European Regional Development Fund

14. Commission Decision 88/588 and Resider II.

Company Specific Subsidies Conferred by the Government of Bolzano

15. Province of Bolzano Assistance: Lease Exemption Under Valbruna/ Bolzano Lease

In *Wire Rod*, benefits received under this program were found to be less than 0.5 percent of CAS' sales during the POI, the year of approval and, thus, were expensed in the year of receipt. 64 FR at 40485. No new amounts were reported to have been received since the POI in *Wire Rod* under this program.

Company Specific Subsidies Conferred by the Regional Government of Valle D'Aosta

16. Valle D'Aosta Regional Assistance Associated With the Sale of CAS: Provision of Electricity

As part of the original protocols in which the Regional Government purchased the Cogne industrial site, the operator of ILVA's hydroelectric plants, ILVA Centrali Elettriche S.p.A. ("ICE") (now known as Compagnia Valdostana delle Acque S.p.A. ("Valdostana")) was acquired. Using Valdostana, the Regional Government planned to supply electricity directly to CAS through a consortium ("Consortio") (CAS would be a member of the Consortio through its planned purchase of shares in Valdostana).

In *Wire Rod*, we stated the law at that time did not permit CAS to purchase electricity from entities other than ENEL, the state-owned electric company. 64 FR at 40482. We also stated, however, should the law change, we would reexamine the countervailability of this program. *Id.*

Because the Regional Government has reported in this investigation that CAS decided not to acquire shares in Valdostana and does not purchase electricity from the Consortio, we preliminarily find this program not used.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Producer/exporter	Net subsidy rate (percent)
Cogne Acciai Speciali S.r.l.	12.59
Acciaierie Valbruna S.r.l./ Acciaierie Bolzano S.r.l.	0.60
Acciaiera Foroni S.p.A.	0.00
Trafileria Bedini S.r.l.	0.01
Italfond S.p.A.	0.18
Rodacciai S.p.A.	0.07
All Others	12.59

In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A), we have set the "all others" rate as CAS' rate, because the rates for all other investigated companies are either zero

or de minimis. We note that although portions of CAS' rate were based on adverse facts available, we based the majority of our calculations on information provided by the GOI and EC in this investigation.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel bar from Italy for CAS and for any non-investigated exporters which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice. Liquidation of entries from Valbruna, Foroni, Bedini, Italfond, and Rodacciai will not be suspended at this time because we have preliminarily determined their rates to be either zero or de minimis.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR section 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Requests for a

public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days after the filing of case briefs. Written arguments should be submitted in accordance with 19 CFR section 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: May 29, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01-14133 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of Open Meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA)

science programs are of the highest quality and provide optimal support to resource management.

TIME AND DATE: The meeting will be held Tuesday, June 26, 2001, from 1 p.m. to 5 p.m.; Wednesday, June 27, 2001, from 8 a.m. to 5 p.m.; and Thursday, June 28, from 8 a.m. to 12:30 p.m.

ADDRESSES: The meeting on Tuesday, June 26 will be held at the National Marine Fisheries Service Laboratory, 110 Shaffer Road, Santa Cruz, CA. On Wednesday, June 27, and Thursday, June 28, the meeting will be held at the West Coast Santa Cruz Hotel, 175 West Cliff Drive, Santa Cruz, CA.

STATUS: The meeting will be open to public participation with four 15-minute time periods set aside for questions or direct verbal comments from the public on agenda items and two 30-minute periods for public statements on any NOAA-related subject. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by June 18, 2001, in order to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after June 18 will be distributed to the SAB, but many not be reviewed prior to the meeting date. Approximately thirty (30) sets will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will include the following topics: (1) Fisheries science in the NOAA line offices and their programs, (2) The role of academia and other partners in fisheries science, (3) Impediments to effective NMFS management and science practices, (4) Briefings on outcomes of NOAA Constituents Workshop, (5) Review of Department of Commerce's Aquaculture Guidelines, (6) Review and discussion of the Report of the Panel on Strategies for Climate Monitoring, (7) Public Input Sessions with SAB discussion, and (8) SAB Sub-Committee and Working Group Reports.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 10600, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301-713-9121, E-mail: Michael.Uhart@noaa.gov); or visit the

NOAA SAB website at <http://www.sab.noaa.gov>.

Dated: June 1, 2001.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 01-14265 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-KD-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053101G]

Marine Mammals; File No. 756-1630

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dan Tapster, BBC Natural History Unit, Broadcasting House, Whiteladies Road, Bristol, BS8 2LR, United Kingdom, has applied in due form for a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of commercial/educational photography.

DATES: Written or telefaxed comments must be received on or before July 6, 2001.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432; phone (727) 570-5301; fax (727) 570-5320.

FOR FURTHER INFORMATION CONTACT: Lynne Barre or Jill Lewandowski, (301) 713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104 (c)(6) of the MMPA provides for photography permits for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a "pilot" application for

Level B Harassment of non-listed marine mammals for photographic purposes.

The applicant proposes to film up to 200 bottlenose dolphins feeding on the mud banks of Hilton Head, South Carolina for Sir David Attenborough's series, *The Life of Mammals*, which will air on the BBC in the United Kingdom and on The Discovery Channel in the United States. Filming will take place for approximately 17 days during the month of October, 2001.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 31, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.

[FR Doc. 01-14281 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053001C]

Marine Mammals; File No. 774- 1634-00

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038 (Principal Investigator: Dr. Karin A. Forney) has applied in due form for a permit to take, primarily, the eastern and southern 'Whitebelly' stocks of spinner dolphin (*Stenella longirostris orientalis*) and the northeastern offshore and coastal stocks of pantropical spotted dolphin (*Stenella attenuata graffmani*). Additional species that may be encircled and sampled include: short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), spotted dolphin (*Stenella attenuata*), southern/western stock spinner dolphin (*Stenella longirostris centroamericana*), Central American stock striped dolphin (*Stenella coeruleoalba*), Fraser's dolphin (*Lagenodelphis hosei*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), bottlenose dolphin (*Tursiops truncatus*), rough-toothed dolphin (*Steno bredanensis*), Risso's dolphin (*Grampus griseus*), pilot whale (*Globicephala spp.*), and melon-headed whale (*Peponocephala electra*), for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before July 6, 2001.

ADDRESSES: The application, accompanying Environmental Assessment, and other related documents are available for review by written request, by downloading from the internet, or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376, or the Permits Division's web page, (<http://www.nmfs.noaa.gov/prot-res/overview/permits.html>); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4001; fax (562) 980-4018, or the Center's web page (<http://swfsc.ucsd.edu>).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Tammy Adams, Ph.D., (301) 713-2289).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to take the above mentioned species in a research project that covers the "experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement", as mandated in the 1997 International Dolphin Conservation Program Act (IDCPA) (MMPA, Sec. 304 (a)(3)(C)) as one component of stress studies on dolphins involved in the eastern tropical Pacific tuna purse seine fishery. The objective of the experiment, as outlined in the law, is to "evaluate whether the intentional deployment on, or encirclement of, dolphins by purse-seine nets is having a significant adverse impact on any depleted dolphin stock." The requested studies will include several complementary research projects that address different ways in which chase and capture stress may manifest itself in individual dolphins involved in tuna purse seine operations. The number of animals and research techniques that will be used for evaluating stress are outlined in the following table:

BROKEN DOWN BY COMBINATION OF TAKE TYPES FOR EACH INDIVIDUAL

	TOTAL	Not handled		Re- strained in water	Handled in raft and examined					
		Set Only	Biopsy (Adult)		(Adults only)	(Adults only)	(Adults only)	(Adults only)	(Adults only)	(Adults only)
Number of dolphins:	24,000	21360	1800	300	20	5	15	50	445	5
Set-related takes										
Chase		X	x	x						
Helicopter overflight		x	x	x						

BROKEN DOWN BY COMBINATION OF TAKE TYPES FOR EACH INDIVIDUAL—Continued

	TOTAL	Not handled		Re- strained in water	Handled in raft and examined					
		Set Only	Biopsy (Adult)		(Adults only)	(Adults only)	(Adults only)	(Adults only)	(Adults only)	(Adults only)
Encirclement		x	x	x						
Photographed		x	x	x	x	x	x	x	x	x
Biopsy			x							
Calf skin swab				x						
<i>Handling-related takes</i>										
Blood sample					x	x	x	x	x	x
Saddle Package - Radio tag					x					
Saddle Package - Satellite tag						x				
Saddle Package - Thermal tag							x			
Roto-Radio Tag									x	
Roto Tag								x		
Suction Cup Package - Thermal										x
Core temperature probe					x		x			x
Skin sample					x	x	x	x	x	x
Ultrasound					x	x	x	x	x	x
EKG					x	x	x	x	x	x
Accidental mortality					40 inclusive of all species ¹					

¹This dolphin mortality will be part of the IATTC Director's Reserve under the annual Dolphin Mortality Limits (DMLs) set for the fishery. It will replace any mortality that the chartered fishing vessel would have caused if it had been engaged in normal fishing operations.

Scientific research permits are generally categorically excluded from National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) requirements to prepare an EA or EIS; however, because of the impacts to the species involved and the intense public interest in this project, NMFS, in compliance with NEPA, has determined that an environmental assessment (EA) is warranted. The draft EA is a companion document to the scientific research permit application and is available for review simultaneously.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

May 31, 2001.

Ann D. Terbush,

*Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. 01-14282 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-22-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

June 1, 2001.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Issuing a directive to the
Commissioner of Customs adjusting
limits.

EFFECTIVE DATE: June 6, 2001.

FOR FURTHER INFORMATION CONTACT: Ross
Arnold, International Trade Specialist,
Office of Textiles and Apparel, U.S.
Department of Commerce, (202) 482-
4212. For information on the quota
status of these limits, refer to the Quota
Status Reports posted on the bulletin
boards of each Customs port, call (202)
927-5850, or refer to the U.S. Customs
website at <http://www.customs.gov>. For
information on embargoes and quota re-
openings, refer to the Office of Textiles

and Apparel website at [http://
www.otexa.ita.doc.gov](http://www.otexa.ita.doc.gov).

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural
Act of 1956, as amended (7 U.S.C. 1854);
Executive Order 11651 of March 3, 1972, as
amended.

The current limits are being adjusted
for carryover and the recrediting of
unused carryforward applied in
agreement year 2000.

A description of the textile and
apparel categories in terms of HTS
numbers is available in the
CORRELATION: Textile and Apparel
Categories with the Harmonized Tariff
Schedule of the United States (see
Federal Register notice 65 FR 82328,
published on December 28, 2000). Also
see 64 FR 66972, published on
November 8, 2000.

J. Hayden Boyd,

*Acting Chairman, Committee for the
Implementation of Textile Agreements.*

Committee for the Implementation of Textile Agreements

June 1, 2001.

Commissioner of Customs,
*Department of the Treasury, Washington, DC
20229.*

Dear Commissioner: This directive
amends, but does not cancel, the directive
issued to you on November 2, 2000, by the
Chairman, Committee for the Implementation
of Textile Agreements. That directive
concerns imports of certain cotton and man-
made fiber textile products, produced or
manufactured in Pakistan and exported
during the twelve-month period which began

on January 1, 2001 and extends through December 31, 2001.

Effective on June 6, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
Specific limits	
219	12,154,178 square meters.
237	591,134 dozen.
239pt. ²	2,552,951 kilograms.
314	8,546,052 square meters.
315	93,668,815 square meters.
317/617	50,497,042 square meters.
334/634	340,995 dozen.
335/635	573,206 dozen.
336/636	754,097 dozen.
339	1,963,249 dozen.
340/640	911,733 dozen of which not more than 319,532 dozen shall be in Categories 340-D/640-D ³ .
341/641	1,131,145 dozen.
342/642	559,858 dozen.
359-C/659-C ⁴	2,128,086 kilograms.
369-F/369-P ⁵	3,413,559 kilograms.
613/614	33,615,378 square meters.
615	37,853,501 square meters.
625/626/627/628/629	109,984,967 square meters of which not more than 54,992,485 square meters shall be in Category 625; not more than 54,992,485 square meters shall be in Category 626; not more than 54,992,485 square meters shall be in Category 627; not more than 11,377,756 square meters shall be in Category 628; and not more than 54,992,485 square meters shall be in Category 629.
638/639	640,362 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 2000.

² Category 239pt.: only HTS number 6209.20.5040 (diapers).

³ Category 340-D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640-D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

⁴ Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

⁵ Category 369-F: only HTS number 6302.91.0045; Category 369-P: only HTS numbers 6302.60.0010 and 6302.91.0005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
J. Hayden Boyd,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01-14246 Filed 6-5-01; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 01-2]

Quantum North America, Inc., and e4L, Inc.; Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint in the matter of Quantum North America, Inc., and e4L, Inc.

SUPPLEMENTARY INFORMATION: The text of the Complaint appears below.

Dated: May 31, 2001.

Todd A. Stevenson,
Deputy Secretary.

Complaint

Nature of Proceedings

1. This is an administrative proceeding pursuant to section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2064; for public notification and remedial action to protect the public from substantial risks of injury presented by the Red Devil gas grill. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 CFR part 1025.

Jurisdiction

2. This proceeding is instituted pursuant to the authority contained in sections 15(c), (d) and (f) of the CPSA, 15 U.S.C. 2064(c), (d) and (f).

Parties

3. Complaint counsel is the staff of the Legal Division of the Office of Compliance of the U.S. Consumer Product Safety Commission, an independent regulatory commission established by section 4 of the CPSA. 15 U.S.C. 2053.

4. Respondent Quantum North America, Inc. (hereinafter referred to as "Quantum") is a Delaware Corporation, with its principal place of business located at 15821 Ventura Boulevard, Encino, California.

5. Respondent, e4L, Inc. (hereinafter referred to as "e4L") is a Delaware Corporation, with its principal place of business located at 15821 Ventura Boulevard, Encino, California.

6. Quantum and e4L are "manufacturers" of consumer products as that term is defined in the CPSA, 15 U.S.C. 2052(a)(4). Quantum and e4L manufactured the Red Devil gas grill.

The Consumer Product

7. The Red Devil gas grill was produced and distributed specifically for sale to or use by consumers as an outdoor cooking appliance in or around a permanent or temporary residence. These gas grills are "consumer products" that were "distributed in commerce." 15 U.S.C. 2052(a)(1)(i) and (ii).

Defect

8. Paragraphs 1 through 7 are hereby realleged, and incorporated by reference as though fully set forth herein.

9. The Red Devil gas grill connects to a propane gas container. A plastic locking mechanism sits atop a collapsible three legged stand. A top threaded venturi tube, which contains four (4) symmetrical air intake openings, is placed through the underside of a plastic locking mechanism, and is vertically locked into place by flipping a handle. The lower end of the venturi tube is attached to a gas regulator. A burner pan is then placed on top of the venturi tube.

10. The Red Devil gas grill design leads consumers to light the grill at the air intake openingS on the venturi tube. If the grill is lit at this location, the consumer is igniting the combustible gas inside the tube. The grill will appear to function as intended, however, the venturi tube will reach temperatures up to 750°F.

11. The plastic locking mechanism will melt and deform when subject to temperatures over 230°F. When the plastic deforms it allows the grill to collapse and fall to the ground.

12. Each Red Devil gas grill is packaged with an instruction booklet. Said booklet calls for the grill to be lit at the burner.

13. The instruction booklet, referred to in paragraph 12, does not contain an illustration that shows the consumer where to properly light the grill. Said booklet also does not warn consumers of the danger in lighting the grill at the venturi opening. It is also foreseeable that this booklet will not remain with the grill.

14. The features of the Red Devil gas grill, as set forth in paragraphs 9 through 11 above, constitute design defects under 15 U.S.C. 2064.

15. The failure to provide adequate instructions on how to light the Red Devil gas grill, or to warn consumers about the danger in lighting the grill at the venturi opening, as set forth in paragraph 12 and 13 above, constitutes a defect under 15 U.S.C. 2064.

2. Substantial Risk of Injury

16. All of the approximately 155,544 Red Devil gas grills have the same venturi tube and plastic locking mechanism design. It is foreseeable that consumers will light the grill at the venturi openings. Each grill has the potential to cause a severe burn injury.

17. If the Red Devil gas grill tips over, following the melting of the plastic locking mechanism, flames from the burner may ignite surrounding combustibles. This could cause severe burns or death to nearby consumers. It is also reasonably foreseeable that a consumer who is present would attempt to catch the falling grill, and receive severe burns to his or her hands or other body parts.

18. The defects in the Red Devil gas grill create a substantial risk of injury to consumers, within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

19. The Red Devil gas grill presents a substantial product hazard, as described in sections 15(a)(2), (c) and (d) of the CPSA, 15 U.S.C. 2064(a)(2), (c) and (d).

Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that Respondents' Quantum and e4L Red Devil gas grill presents a "substantial product hazard" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

B. Determine that public notification under section 15(c) of the CPSA, 15 U.S.C. 2064(c), is required to protect the public adequately from the substantial product hazard presented by the Red Devil gas grill which has been distributed and order that the Respondents:

(1) Give prompt public notice that the Red Devil gas grill presents an injury and fire hazard to consumers and of the remedies available to remove the risk of injury;

(2) Mail such notice to each person who is or has been a distributor or retailer of the Red Devil gas grill;

(3) Mail such notice to every person to whom Respondents know the Red Devil gas grill were delivered or sold; and

(4) Include in the notice required by (1), (2) and (3) above a complete description of the hazard presented, a warning to stop using the Red Devil gas grill immediately; and clear instructions to inform consumers how to avail themselves of any remedy ordered by the Commission.

C. Determine that action under section 15(d) of the CPSA, 15 U.S.C. 2064(d), is in the public interest and order Respondents:

(1) To elect to repair all the Red Devil gas grills so they will not create an injury and fire hazard; to replace all the Red Devil gas grills with a like or equivalent product which will not create an injury or fire hazard; or to refund to consumers the purchase price of the Red Devil gas grill;

(2) To make no charge to consumers and to reimburse them for any foreseeable expenses incurred in availing themselves of any remedy provided under any order issued in this matter;

(3) To reimburse distributors and dealers for expenses in connection with carrying out any Commission Order issued in this matter;

(4) To submit a plan satisfactory to the Commission, within ten (10) days of service of the final Order, directing that actions specified in paragraph C(1) through C(3) above be taken in a timely manner;

(5) To submit monthly reports documenting progress of the corrective action program;

(6) For a period of five (5) years after entry of a Final Order in this matter, to keep records of its actions taken to comply with paragraphs C(1) through C(3) above, and to supply these records upon request to the Commission for the purpose of monitoring compliance with the Final Order;

(7) To notify the Commission at least 60 days prior to any change in their

business (such as incorporation, dissolution, assignment, sale or petition for bankruptcy) that results in, or is intended to result in, the emergence of successor ownership, the creation or dissolution of subsidiaries, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission; and

(8) To take such other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

Issued by order of the Commission.

Dated this 29th day of May, 2001.

Alan H. Schoem,
Assistant Executive Director, Office of
Compliance, U.S. Consumer Product Safety
Commission, (301) 504-0621.

Eric L. Stone,
Director, Legal Division, Office of
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BILLING CODE 6350-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC), DOT.

ACTION: Notice of Proposed Amendments to the Manual for Courts-Martial, United States, (2000 ed.) and Notice of Public Meeting.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (2000 ed.) (MCM). The proposed changes are the 2001 draft annual review required by the MCM and DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military

Departments, or any other government agency.

This notice also sets forth the date, time and location for the public meeting of the JSC to discuss the proposed changes.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

In accordance with paragraph III B 4 of the Internal Organization and Operating Procedures of the JSC, the committee also invites members of the public to suggest changes to the Manual for Courts-Martial in accordance with the herein-described format.

DATES: Comments on the proposed changes must be received no later than August 20, 2001 for consideration by the JSC. A public meeting will be held on Thursday, July 19, 2001 at 2:00 p.m. It will be held at Room 808, 1501 Wilson Blvd., Arlington, VA 22209-2403.

ADDRESSES: Comments on the proposed changes should be sent to Captain Richard M. Burke, U.S. Marine Corps, Military Law Branch, Judge Advocate Division, HQMC, Room 5E618, Washington, DC 20380-1775.

FOR FURTHER INFORMATION CONTACT: Captain Richard M. Burke, U.S. Marine Corps, Military Law Branch, Judge Advocate Division, HQMC, Room 5E618, Washington, DC 20380-1775, (703) 614-3699/4250; FAX (703) 695-8350.

SUPPLEMENTARY INFORMATION: The proposed amendments to the Manual for Courts-Martial are as follows:

Amend paragraph 4 of the Preamble by adding a new third subparagraph to read as follows:

The Department of Defense Joint Service Committee (JSC) on Military Justice reviews the Manual for Courts-Martial and proposes amendments to the Department of Defense for consideration by the President on an annual basis. In conducting its annual review, the JSC is guided by DoD Directive 5500.17, "The Roles and Responsibilities of the Joint Service Committee (JSC) on Military Justice," a copy of which is included in this Manual as Appendix 26. DoD Directive 5500.17 includes provisions allowing public participation in the annual review process.

Amend R.C.M. 307(c)(3) to read as follows:

Specification. A specification is a plain, concise, and definite statement of the

essential facts constituting the offense charged. A specification is sufficient if it alleges every element of the charged offense expressly or by necessary implication. Except for aggravating factors under R.C.M. 1003(d) and R.C.M. 1004, facts that increase the maximum authorized punishment must be alleged in order to permit the possible increased punishment. No particular format is required.

Amend subparagraph (ix) of the Discussion accompanying R.C.M. 307(c) to read as follows:

(ix) *Matters in aggravation.* Matters in aggravation that do not increase the maximum authorized punishment ordinarily should not be alleged in the specification. Prior convictions need not be alleged in the specification to permit increased punishment. Aggravating factors in capital cases should not be alleged in the specification. Notice of such factors is normally provided in accordance with R.C.M. 1004(b)(1).

Amended the analysis accompanying R.C.M. 307(c)(3) by inserting the following at the end thereof:

200 Amendment: The Rule was amended by modifying language in the Discussion at (H)(ix), and pulling it into the text of the Rule, to emphasize that facts that increase maximum authorized punishments must be alleged and proven beyond a reasonable doubt. *Jones v. United States*, 526 U.S. 227 (1999) *See also Apprendi v. New Jersey*, 530 U.S. 466 (2000). R.C.M. 1003(d) prior convictions and R.C.M. 1004 capital aggravating factors were excluded because the rule in *Apprendi* exempts prior convictions and distinguishes capital sentencing schemes. R.C.M. 1004 capital aggravation factors were also excluded to avoid complicating Part IV of the Manual and because R.C.M. 1004 already establishes a separate scheme for satisfying an accused's Constitutional rights in this area. *See Walton v. Arizona*, 497 U.S. 639 (1990) (capital aggravation factors as "standards" to guide the making a choice between death and lesser punishment).

Insert the following Discussion to accompany R.C.M. 405(g)(1)(A):

A witness located beyond the 100 mile limit is not *per se* unavailable. To determine if a witness beyond 100 miles is reasonably available, the significance of the witness's live testimony must be balanced against the relative difficulty and expense of obtaining the witness's presence at the hearing.

Amend the analysis accompanying R.C.M. 405(g)(1) by inserting the following before the discussion of subsection (2):

200 Amendment: The Discussion to subsection (g)(1)(A) is new. It was added in light of the decision in *United States v. Marie*, 43 M.J. 35 (1995) that a witness beyond 100 miles from the site of the investigation is not *per se* unavailable.

Amend the second paragraph of the Discussion accompanying R.C.M. 406(b) to read as follows:

The advice need not set forth the underlying analysis or rationale for its conclusions. Ordinarily, the charge sheet, forwarding letter, and endorsements, and report of investigation are forwarded with the pretrial advice. In addition the pretrial advice should include when appropriate: a brief summary of the evidence; discussion of significant aggravating, extenuating, or mitigating factors; any recommendations for disposition of the case by commanders or others who have forwarded the charges; and the recommendation of the Article 32 investigating officer. However, there is no legal requirement to include such information, and failure to do so is not error.

Amend the analysis accompanying R.C.M. 406(b) by inserting the following at the end thereof:

200 Amendment: The Discussion to R.C.M. 406(b) was amended to add as additional, non-binding guidance that the SJA should include the recommendation of the Article 32 investigating officer.

Amend R.C.M. 707(b)(3)(D) to read as follows:

Rehearings. If a rehearing is ordered or authorized by an appellate court, a new 120-day time period under this rule shall begin on the date that the responsible convening authority receives the record of trial and the opinion authorizing or directing a rehearing. An accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904 or, if arraignment is not required (such as in the case of a sentence-only rehearing), at the time of the first session under R.C.M. 803.

Amend the analysis accompanying R.C.M. 707(b) by inserting the following before the discussion of subsection (c):

200 Amendment: Subsection (3)(D) was amended in light of *United States v. Becker*, 53 M.J. 229 (2000), to clarify that the 120-day time period applies to sentence-only rehearsings. The amendment also designates the first session under R.C.M. 803 as the point where an accused is brought to trial in a sentence-only rehearing.

Amend R.C.M. 707(c) to read as follows:

(c) *Excludable delay.* All periods of time during which appellate courts have issued stays in the proceedings, or the accused is absent without authority, or the accused is hospitalized due to incompetence, or is otherwise in the custody of the Attorney General, shall be excluded when determining whether the period in subsection (a) of this rule has run. All other pretrial delays approved by a military judge or the convening authority shall be similarly excluded.

Delete the Discussion accompanying R.C.M. 707(c).

Amend the analysis accompanying R.C.M. 707(c) by inserting the following before the discussion of subsection (d):

200 Amendment: Subsection (c) was amended to treat periods of the accused's unauthorized absence as excludable delay for purposes of speedy trial. *See United States v. Dies*, 45 M.J. 376 (1996). The discussion was deleted as superfluous.

Amend R.C.M. 707(d) to read as follows:

(d) *Remedy.* A failure to comply with this rule will result in dismissal of the affected charges, or, in a sentence-only rehearing, sentence relief as appropriate.

(1) *Dismissal.* Dismissal will be with or without prejudice to the government's right to reinstitute court-martial proceedings against the accused for the same offense at a later date. The charges must be dismissed with prejudice where the accused has been deprived of his or her constitutional right to a speedy trial. In determining whether to dismiss charges with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a prosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial.

(2) *Sentence relief.* In determining whether or how much sentence relief is appropriate, the military judge shall consider, among others, each of the following factors: the length of the delay, the reasons for the delay, the accused's demand for speedy trial, and any prejudice to the accused from the delay. Any sentence relief granted will be applied against the sentence approved by the convening authority.

Insert the following Discussion accompanying R.C.M. 707(d):

See subsection (c)(1) and the accompanying Discussion concerning reasons for delay and procedures for parties to request delay.

Amend the analysis accompanying R.C.M. 707(d) by inserting the following before the discussion of subsection (e):

200 Amendment: Subsection (d) was amended in light of *United States v. Becker*, 53 M.J. 229 (2000), to provide for sentence relief as a sanction for violation of the 120-day rule in sentence-only rehearings. The amendment sets forth factors for the court to consider to determine whether or to what extent sentence relief is appropriate and provides for the sentence credit to be applied to the sentence approved by the convening authority.

Amend R.C.M. 806(b) to read as follows:

(b) *Control of spectators and closure.*

(1) *Control of spectators.* In order to maintain the dignity and decorum of the proceedings or for other good cause, the military judge may reasonably limit the number of spectators in, and the means of access to, the courtroom, and exclude specific persons from the courtroom. When excluding specific persons, the military judge must make findings on the record establishing the reason for the exclusion, the basis for the military judge's belief that

exclusion is necessary, and that the exclusion is as narrowly tailored as possible.

(2) *Closure.* Courts-martial shall be open to the public unless (1) there is a substantial probability that an overriding interest will be prejudiced if the proceedings remain open; (2) closure is no broader than necessary to protect the overriding interest; (3) reasonable alternatives to closure were considered and found inadequate; and (4) the military judge makes case-specific findings on the record justifying closure.

The following discussion is added to R.C.M. 806(b)(1):

The military judge must ensure that the dignity and decorum of the proceedings are maintained and that the rights and interests of the parties and society are protected. Public access to a session may be limited, specific persons excluded from the courtroom, and, under unusual circumstances, a session may be closed.

Exclusion of specific persons, if unreasonable under the circumstances, may violate the accused's right to a public trial, even though other spectators remain. Whenever specific persons or some members of the public are excluded, exclusion must be limited in time and scope to the minimum extent necessary to achieve the purpose for which it is ordered. Prevention of overcrowding or noise may justify limiting access to the courtroom. Disruptive or distracting appearance or conduct may justify excluding specific persons. Specific persons may be excluded when necessary to protect witnesses from harm or intimidation. Access may be reduced when no other means is available to relieve a witness' inability to testify due to embarrassment or extreme nervousness. Witnesses will ordinarily be excluded from the courtroom so that they cannot hear the testimony of other witnesses. *See Mil. R. Evid. 615.*

The following discussion is added to R.C.M. 806(b)(2):

The military judge is responsible for protecting both the accused's right to, and the public's interest in, a public trial. A court-martial session is "closed" when no member of the public is permitted to attend. A court-martial is not "closed" merely because the exclusion of certain individuals results in there being no spectators present, so long as the exclusion is not so broad as to effectively bar everyone who might attend the sessions and is for a proper purpose.

A session may be closed over the objection of the accused or the public upon meeting the constitutional standard set forth in this Rule. *See also Mil. R. Evid. 412(c), 505(i) and (j), 506(i), and 513(e)(2).*

The accused may waive his right to a public trial. The fact that the prosecution and defense jointly seek to have a session closed does not, however, automatically justify closure, for the public has a right to attend courts-martial. Opening trials to public scrutiny reduces the chance of arbitrary and capricious decisions and enhances public confidence in the court-martial process.

The most likely reason for a defense request to close court-martial proceedings is to minimize the potentially adverse effect of

publicity on the trial. For example, a pretrial Article 39(a) hearing at which the admissibility of a confession will be litigated may, under some circumstances, be closed, in accordance with this Rule, in order to prevent disclosure to the public (and hence to potential members) of the very evidence that may be excluded. When such publicity may be a problem, a session should be closed only as a last resort.

There are alternative means of protecting the proceedings from harmful effects of publicity, including a thorough *voir dire* (*see R.C.M. 912*), and if necessary, a continuance to allow the harmful effects of publicity to dissipate (*see R.C.M. 906(b)(1)*). Alternatives that may occasionally be appropriate and are usually preferable to closing a session include: directing members not to read, listen to, or watch any accounts concerning the case; issuing a protective order (*see R.C.M. 806(d)*); selecting members from recent arrivals in the command, or from outside the immediate area (*see R.C.M. 503(a)(3)*); changing the place of trial (*see R.C.M. 906(b)(11)*); or sequestering the members.

Amend the analysis accompanying R.C.M. 806(b) by inserting the following before the discussion of subsection (c):

200 Amendment: Subsection (b) was divided to separate the provisions addressing control of spectators and closure and to clarify that exclusion of specific individuals is not a closure. The rules for control of spectators now in subsection (b)(1) were amended to require the military judge to articulate certain findings on the record prior to excluding specific spectators. *See United States v. Short*, 41 M.J. 42 (1994). The rules on closure now in subsection (b)(2) and the Discussion were amended in light of military case law that has applied the Supreme Court's Constitutional test for closure to courts-martial. *See ABC Inc. v. Powell*, 47 M.J. 363 (1997); *United States v. Hershey*, 20 M.J. 433 (C.M.A. 1985); *United States v. Grunden*, 2 M.J. 116 (C.M.A. 1977).

Amend the Discussion accompanying R.C.M. 916(k)(1) to read as follows:

See R.C.M. 706 concerning sanity inquiries; *R.C.M. 909* concerning the capacity of the accused to stand trial; and *R.C.M. 1102A* concerning any post-trial hearing for an accused found not guilty only by reason of lack of mental responsibility.

Amend the analysis accompanying R.C.M. 916(k)(1) by inserting the following before the discussion of subsection (2):

200 Amendment: The Discussion to R.C.M. 916(k)(1) was amended to add a cross-reference to R.C.M. 1102A.

Amend R.C.M. 916(k)(1) to read as follows:

(2) *Partial mental responsibility.* A mental condition not amounting to a lack of mental responsibility under subsection (k)(1) of this rule is not an affirmative defense.

Insert the following Discussion to accompany R.C.M. 916(k)(2):

Discussion. Evidence of a mental condition not amounting to a lack of mental responsibility may be admissible as to whether the accused entertained a state of mind necessary to be proven as an element of the offense. The defense must notify the trial counsel before the beginning of trial on the merits if the defense intends to introduce expert testimony as to the accused's mental condition. See R.C.M. 701(b)(2).

Amend the analysis accompanying R.C.M. 916(k)(2) by inserting the following before the discussion of subsection (3):

200 Amendment: Subsection (k)(2) was modified to clarify that evidence of an accused's impaired mental state may be admissible. See *United States v. Schap*, 49 M.J. 317,322 (1998); *United States v. Berri*, 33 M.J. 337 (C.M.A. 1991); *Ellis v. Jacob*, 26 M.J. 90 (C.M.A. 1988).

Amend R.C.M. 1103(f)(2) to read as follows:

(2) Direct a rehearing as to any offense of which the accused was found guilty if the finding is supported by the summary of the evidence contained in the record, provided that the convening authority may not approve any sentence imposed at such a rehearing more severe than or in excess of that adjudged by the earlier court-martial.

Amend the analysis accompanying R.C.M. 1103(f) by inserting the following before the discussion of subsection (g):

200 Amendment: Subsection (f)(2) was amended to reflect amendments to Article 63, UCMJ, in the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, 106 Stat. 2315,2506 (1992). The revisions provide that subsection (f)(2) sentencing limitations are properly applicable only to the sentence that may be approved by the convening authority following a rehearing. Subsection (f)(2) as revised does not limit the maximum sentence that may be adjudged at the rehearing. See *United States v. Gibson*, 43 M.J. 343, 346 n.3 (1995); *United States v. Lawson*, 34 M.J. 38 (C.M.A. 1992) (Cox, J., concurring); *United States v. Greaves*, 48 M.J. 885 (A.F.Ct.Crim.App. 1998), rev. denied, 51 M.J. 365 (1999).

Insert the following new subsection (iv) after R.C.M. 1107(e)(1)(B)(iii) to read as follows:

(iv) *Sentence reassessment.* If a superior authority has approved some of the findings of guilty and has authorized a rehearing as to other offenses and the sentence, the convening authority may, unless otherwise directed, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges. Reassessment is appropriate only where the convening authority determines that the accused's sentence would have been at least of a certain magnitude had the prejudicial error not been committed and the reassessed sentence is appropriate in relation to the affirmed findings of guilty.

Amend the Discussion to R.C.M. 1107(e)(1)(B)(iii) to read as follows:

A sentence rehearing, rather than a reassessment, may be more appropriate in cases where a significant part of the government's case has been dismissed. The convening authority may not take any action inconsistent with directives of superior competent authority. Where that directive is unclear, appropriate clarification should be sought from the authority issuing the original directive.

Amend the analysis accompanying R.C.M. 1107(e)(1) by inserting the following before the discussion of subsection (2):

200 Amendment: The Discussion to R.C.M. 1107(e)(1)(B)(iii) was moved to new subsection (1)(B)(iv) to expressly recognize that, in cases where a superior authority has approved some findings of guilty and has authorized a rehearing as to other offenses, the convening authority may, unless otherwise directed, reassess a sentence based on approved findings of guilty under the criteria established by *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986), and dismiss the remaining charges. See *United States v. Harris*, 53 M.J. 86 (2000). The power of convening authorities to reassess had been expressly authorized in paragraph 92a of MCM, 1969. The authorizing language was moved to the Discussion following R.C.M. 1107(e)(1)(B)(iii) in MCM, 1984. The Discussion was amended to advise practitioners to apply the criteria for sentence reassessment established by *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986). See also *United States v. Harris*, 53 M.J. 86 (2000); *United States v. Eversole*, 53 M.J. 132 (2000). The Discussion was further amended to encourage practitioners to seek clarification from superior authority where the directive to the convening authority is unclear.

Amend R.C.M. 1108(b) to read as follows:

(b) *Who may suspend and remit.* The convening authority may, after approving the sentence, suspend the execution of all or any part of the sentence of court-martial, except for a sentence of death. The general court-martial convening authority over the accused at the time of the court-martial may, when taking the action under R.C.M. 1112(f), suspend or remit any part of the sentence. The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President or a sentence of confinement for life without eligibility for parole that has been ordered executed. The Secretary concerned may, however, suspend or remit the unexecuted part of a sentence of confinement for life without eligibility for parole only after the service of a period of confinement of not less than 20 years. The commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part of amount of the unexecuted part of any sentence by summary court-martial or of any sentence by special court-martial which does

not include a bad-conduct discharge regardless of whether the person acting has previously approved the sentence. The "unexecuted part of any sentence" includes that part which has been approved and ordered executed but which has not actually been carried out.

Amend the analysis accompanying R.C.M. 1108 by inserting the following at the end thereof:

200 Amendment: Subsection (b) was amended to conform to the limitations on Secretarial authority to grant clemency for military prisoners serving a sentence of confinement for life without eligibility for parole contained in section 553 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, 114 Stat. 1654, Oct 30, 2000.

Amend R.C.M. 1305(c) to read as follows:

(c) *Authentication.* The summary court-martial shall authenticate the record by signing the original record trail.

Amend the analysis accompanying R.C.M. 1305(c) by inserting the following prior to the discussion of subsection (d):

200 Amendment: This subsection was amended to require that summary courts-martial authenticate the original record of trial, as is currently the procedure for special and general courts-martial.

Amend R.C.M. 1306(b)(1) to read as follows:

(1) *Who shall act.* Except as provided herein, the convening authority shall take action in accordance with R.C.M. 1107. The Convening authority shall not take action before the period prescribed in R.C.M. 1105(c)(2) has expired, unless the right to submit matters has been waived under R.C.M. 1105(d).

Amend the analysis accompanying R.C.M. 1306(b) by inserting the following prior to the discussion of subsection (c):

200 Amendment: The cross-reference to subsection R.C.M. 1105(c)(3) is amended to R.C.M. 1105(c)(2) to conform to the 1987 Change 3 amendment that re-designated R.C.M. 1105(c)(3) as R.C.M. 1105(c)(2).

Amend Mil. R. Evid. 103(a)(2) to read as follows:

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the military judge by offer or was apparent from the context within which questions were asked. Once the military judge makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. The standard provided in this subdivision does not apply to errors involving requirements imposed by the Constitution of the United States as applied to members of the armed forces except insofar as the error arises under these rules and this subdivision provides a standard that is more advantageous to the accused than the constitutional standard.

Amend the analysis accompany Mil. R. Evid. 103(a) by inserting the following prior to the discussion of subsection (b):

200 Amendment: Subdivision 9a)(2) was modified based on the amendment to Fed. R. Evid. 103(a)(2), effective 1 December 2000, and is virtually identical to its Federal Rule counterpart. It is intended to provide that where an advance ruling is definitive, a party need not renew an objection or offer of proof at trial. Otherwise, renewal is required.

Amend Mil. R. Evid. 404(a) to read as follows:

(a) *Character evidence generally.* Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) *Character of accused.* Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a pertinent trait of character of the alleged victim of the crime is offered by an accused and admitted under Mil. R. Evid. 404(a)(2), evidence of the same trait of character, if relevant, of the accused offered by the prosecution;

(2) *Character of alleged victim.* Evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide or assault case to rebut evidence that the alleged victim was an aggressor;

(3) *Character of witness.* Evidence of the character of a witness, as provided in Mil. R. Evid. 607, 608, and 609.

Amend the analysis accompanying Mil. R. Evid. 404(a) by inserting the following prior to the discussion of subsection (b):

200 Amendment: Subdivision (a) was modified based on the amendment to Fed. R. Evid. 404(a), effective 1 December 2000, and is virtually identical to its Federal Rule counterpart. It is intended to provide a more balanced presentation of character evidence when an accused attacks the victim's character. The accused opens the door to an attack on the same trait of his own character when he attacks an alleged victim's character, giving the members an opportunity to consider relevant evidence about the accused's propensity to act in a certain manner. The words "if relevant" are added to subdivision (a)(1) to clarify that evidence of an accused's character under this rule must meet the requirements of Rules 401 and 403. The drafters believe this addition addresses the unique use of character evidence in courts-martial. The amendment does not permit proof of the accused's character when the accused attacks the alleged victim's character as a witness under Rule 608 or 609, nor does it affect the standards for proof of character by evidence of other sexual behavior or sexual offenses under Rules 412-415.

Amend Mil. R. Evid. 701 to read as follows:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based in scientific, technical, or other specialized knowledge within the scope of Mil. R. Evid. 702.

Amend the analysis accompanying Mil. R. Evid. 701 by inserting the following at the end thereof:

200 Amendment: Rule 701 was modified based on the amendment to Fed. R. Evid. 701, effective 1 December 2000, and is taken from the Federal Rule without change. It prevents parties from proffering an expert as a lay witness in an attempt to evade the gatekeeper and reliability requirements of Rule 702 by providing that testimony cannot qualify under Rule 701 if it is based on "scientific, technical or other special knowledge within the scope of Rule 702.

Amend Mil. R. Evid. 702 to read as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Amend the analysis accompanying Mil. R. Evid. 702 by inserting the following at the end thereof:

200 Amendment: Rule 702 was modified based on the amendment to Fed. R. Evid. 702, effective 1 December 2000, and is taken from the Federal Rule without change. It provides guidance for courts and parties as to the factors to consider in determining whether an expert's testimony is reliable in light of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999) (holding that gatekeeper function applies to all expert testimony, not just testimony based on science).

Amend Mil. R. Evid. 703 to read as follows:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert, at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the members by the proponent of the opinion or inference unless the military judge determines that their probative value in assisting the members to

evaluate the expert's opinion substantially outweighs their prejudicial effect.

Amend the analysis accompanying Mil. R. Evid. 703 by inserting the following at the end thereof:

200 Amendment: Rule 703 was modified based on the amendment to Fed. R. Evid. 703, effective 1 December 2000, and is virtually identical to its Federal Rule counterpart. It limits the disclosure to the members of inadmissible information that is used as the basis of an expert's opinion. Compare Mil. R. Evid. 705.

Amend Mil. R. Evid. 803(6) to read as follows:

Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of act, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Mil. R. Evid. 902(11) or any other statute permitting certification in a criminal proceeding in a court of the United States, unless the source of the information or the method or circumstances of preparation indicate a lack of trustworthiness. The term "business" as used in this paragraph includes the armed forces, a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. Among those memoranda, reports, records, or data compilation normally admissible pursuant to this paragraph are enlistment papers, physical examination papers, outline-figure and fingerprint cards, forensic laboratory reports, chain of custody documents, morning reports and other personnel accountability documents, service records, officer and enlisted qualification records, logs, unit personnel diaries, individual equipment records, daily strength records of prisoners, and rosters of prisoners.

Amend the analysis accompanying Mil. R. Evid. 803(6) by inserting the following prior to the discussion of subsection (7):

200 Amendment: Rule 803(6) was modified based on the amendment to Fed. R. Evid. 803(6), effective 1 December 2000. It permits a foundation for business records to be made through certification to save the parties the expense and inconvenience of producing live witnesses for what is often perfunctory testimony. The Rule incorporates federal statutes which allow certification in a criminal proceeding in a court of the United States (See e.g. 18 U.S.C. section 3505, Foreign records of regularly conducted activity). The Rule does not include foreign records of regularly conducted business activity in civil cases as provided in its Federal Rule counterpart. This Rule works together with Rule 902(11).

Insert Mil. R. Evid. 902(11) to read as follows:

(11) *Certified domestic records of regularly conducted activity.* The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Mil. R. Evid. 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record:

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Insert the following new analysis accompanying Mil. R. Evid. 901(11) after the discussion of subsection (10):

200 Amendment: Rule 902(11) was modified based on the amendment to Fed. R. Evid. 902(11), effective 1 December 2000, and is taken from the Federal Rule without change. It provides for self-authentication of domestic business records and sets forth procedures for preparing a declaration of a custodian and other qualified witness that will establish a sufficient foundation for the admission of domestic business records. This Rule works together with Mil. R. Evid. 803(6).

The amendment to the Federal Rules of Evidence, effective in United States District Courts, December 1, 2000, creating Rule 901(12) is not adopted.

Amend the analysis accompanying Mil. R. Evid. 1102 by inserting the following at the end thereof:

200 Amendment: The amendment to the Federal Rules of Evidence, effective in United States District Courts, December 1, 2000, creating Rule 902(12) is not adopted. Federal Rules 301, 302, and 415, were not adopted because they are applicable only to civil proceedings.

Amend Part IV, para 45(b)(2) by deleting para 45(b)(2)(c) and inserting the following after para 45(b)(2)(b):

(Note: Add one of the following elements)

(c) That at the time of the sexual intercourse the person was under the age of 12.

(d) That at the time of the sexual intercourse the person had attained the age of 12 but was under the age of 16.

Amend the analysis accompanying Part IV, para 45(b) by inserting the following prior to the discussion of subsection (c):

b. *Elements.*

200 Amendment: Paragraph 45(b)(2) was amended to add two distinct elements of age based upon the 1994 amendment to paragraph 45(e). *See also* concurrent change to R.C.M. 307(c)(3) and accompanying analysis.

Amend Part IV, para 45(f) to read as follows:

f. *Sample specifications.*

(1) *Rape.*

In that _____ (personal jurisdiction data), (at/on board—location)(subject-matter jurisdiction data, if required), on or about _____ 20____, rape _____, (a person under the age of 12)(a person who had attained the age of 12 but was under the age of 16).

(2) *Carnal Knowledge.*

In that _____ (personal jurisdiction data), did, (at/on board—location)(subject-matter jurisdiction data, if required), on or about _____ 20____, commit the offense of carnal knowledge with _____, (a person under the age of 12)(a person who attained the age of 12 but was under the age of 16).

Amend the analysis accompanying Part IV, para 45(f) by inserting the following at the end of subsection (e):

200 Amendment: Paragraph 45(f)(2) was amended to aid practitioners in charging the two distinct categories of carnal knowledge created in 1994. For the same reason paragraph 45(f)(1) was amended to allow for contingencies of proof because carnal knowledge is a lesser-included offense of rape if properly pleaded. *See also* concurrent change to R.C.M. 307(c)(3) and accompanying analysis.

Amend Part IV, para 51(b) to read as follows:

(1) That the accused engaged in unnatural carnal copulation with a certain other person or with an animal.

(Note: Add any of the following as applicable)

(2) That the act was done with a child under the age of 12.

(3) That the act was done with a child who had attained the age of 12 but was under the age of 16.

(4) That the act was done by force and without the consent of the other person.

Amend the analysis accompanying Part IV, para 51(b) by inserting the following prior to the discussion of subsection (c):

b. *Elements.*

200 Amendment: Paragraph 51(b) was amended by adding two factors pertaining to age based upon the 1994 amendment to paragraph 51(e) that created two distinct categories of sodomy involving a child. *See also* concurrent change to R.C.M. 307(c)(3) and accompanying analysis.

Amend Part IV, para 51(f) to read as follows:

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—

location)(subject-matter jurisdiction data, if required), on or about _____ 20____, commit sodomy with _____, (a child under the age of 12)(a child who had attained the age of 12 but was under the age of 16)(by force and without the consent of the said _____).

Amend the analysis accompanying Part IV, para 45(f) by inserting the following at the end of subsection (e):

200 Amendment: Paragraph 51(f) was amended to aid practitioners in charging the two distinct categories of sodomy involving a child created in 1994. *See also* concurrent change to R.C.M. 307(c)(3) and accompanying analysis.

Amend Part IV, para 57(c)(2)(B) to read as follows:

(b) *Material matter.* The false testimony must be with respect to a material matter, but that matter need not be the main issue in the case. Thus, perjury may be committed by giving false testimony with respect to the credibility of a material witness or in an affidavit in support of a request for a continuance, as well as by giving false testimony with respect to a fact from which a legitimate inference may be drawn as to the existence or nonexistence of a fact in issue.

Amend the analysis accompanying Part IV, para 57(c)(2)(B) by inserting the following before the discussion of subsection (d):

200 Amendment: Subsection (2)(b) was amended to comply with *United States v. Gaudin*, 515 U.S. 506 (1995), which held that when materiality is a statutory element of an offense, it must be submitted to the jury for decision. Materiality cannot be removed from members' consideration by an interlocutory ruling that a statement is material. *See also, Gaudin at 521*, ("It is commonplace for the same mixed question of law and fact to be assigned to the court for one purpose, and to the jury for another."); and *at 517*, ("The prosecution's failure to provide minimal evidence of materiality, like its failure to provide minimal evidence of any other element, of course raises a question of 'law' that warrants dismissal.").

Amend Part IV, para 100a(c)(1) to read as follows:

(1) *In general.* This offense is intended to prohibit and therefore deter reckless or wanton conduct that wrongfully creates a substantial risk of death or grievous bodily harm to others.

Amend Part IV, para 100a(f) to read as follows:

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location)(subject-matter jurisdiction data, if required), on or about _____ 20____, wrongfully and (recklessly)(wantonly) engage in conduct, to wit: (describe conduct), conduct likely to cause death or grievous bodily harm to _____.

Amend the analysis accompanying Part IV, para 100a by inserting the following at the end thereof:

200 Amendment: The sample specification was amended to add the word "wantonly" to make the sample specification consistent with the elements. The phrase "serious bodily harm" has been changed to read "grievous bodily harm" in the sample specification to parallel the language in the elements. Similarly, in the *Explanation*, the phrase "serious injury" was modified to read "grievous bodily harm." The format of the sample specification was also modified to follow the format of other sample specifications in the MCM.

Insert DoD Directive 5500.17, "The Roles and Responsibilities of the Joint Service Committee (JSC) on Military Justice" as Appendix 26.

Members of the public are hereby invited to submit proposals for changes to the Manual for Courts-Martial for consideration by the JSC. All submissions should be received by the close of the public comment period in order to be considered in the next annual review cycle. Proposals should include reference to the specific provision you wish changed, a rational for the proposed change, and specific and detailed proposed language to replace the current language. Incomplete submissions may not be considered. The individual or agency submitting each proposal will be notified in writing whether the JSC voted to decline the proposal as not within the JSC's cognizance, reject it, table, or accept it.

Dated: May 31, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-14152 Filed 6-5-01; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal

investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, June 11, 2001, from 8:30 a.m. to 11:45 a.m. The closed Executive Session will be from 10:50 a.m. to 11:45 a.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Dining Room of Alumni Hall at the U.S. Naval Academy.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander Thomas E. Osborn, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402-5000, telephone number (410) 293-1503.

SUPPLEMENTARY INFORMATION: This notice of a partially closed meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S.C. Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: May 31, 2001.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01-14290 Filed 6-5-01; 8:45 am]

BILLING CODE 3810-FF-U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 6, 2001.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 31, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Federal PLUS Loan Program Application Documents.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 100,000. *Burden Hours:* 50,000.

Abstract: This application form and promissory note is the means by which a parent borrower applies for a Federal PLUS Loan and promises to repay the loan, and a school, lender, and guaranty agency certifies the parent borrower's eligibility to receive a PLUS loan.

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 Joseph Schubart at (202) 708-9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-14174 Filed 6-5-01; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.129A, 84.129C, and 84.129L]

Rehabilitation Training: Rehabilitation Long-Term Training Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel

shortages in rehabilitation as identified by the Assistant Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Assistant Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Eligible Applicants: States and other public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Applications Available: June 29, 2001.

Deadline for Transmittal of

Applications: August 31, 2001.

Deadline for Intergovernmental

Review: October 30, 2001.

Estimated Available Funds: The Administration has requested \$39,629,000 for the Rehabilitation Training Program for FY 2002, of which an estimated \$1,100,000 would be allocated for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: This competition is being conducted in FY 2001 for grants that will be awarded using FY 2002 funds.

Estimated Range of Awards: \$75,000 to \$100,000.

Estimated Average Size of Awards: \$85,000.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

(1) A page is 8.5 inches by 11 inches, on one side only, with 1-inch margins at the top, bottom, and both sides.

(2) Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

(3) Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Project Period, Maximum Number of Awards, Maximum Level of Awards, and Absolute Priorities: We are conducting a single competition to select a total of 13 awards across the 3 priority areas of personnel shortages related to the vocational rehabilitation program (section 302(b)(1) of the Rehabilitation Act of 1973, as amended). The project period and maximum level of awards to be made in each priority area are listed in the following chart. The maximum number of awards to be made are listed in parentheses following each priority area. Applicants must submit a separate application for each priority area in which they are interested. Under 34 CFR 75.105(c)(3) and 34 CFR 386.1, we consider only applications that propose to provide training in one of the following areas of personnel shortage:

CFDA number	Priority Area (Maximum number of awards in parentheses)	Project period	Maximum level of award
84.129A	Rehabilitation medicine (3)	Up to 60 months	\$100,000
84.129C	Rehabilitation administration (4)	Up to 60 months	\$100,000
84.129L	Undergraduate education in the rehabilitation services (9).	Up to 60 months	\$75,000

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 99; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this

competition, we use the selection criteria in 34 CFR 385.31 and 386.20. The selection criteria to be used for this competition will be provided in the application package for this competition.

The maximum score for all these criteria is 100 points; however, we will

also use the competitive preference priority so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Priority

Competitive Preference Priority

Within the absolute priorities for this competition for FY 2001, this competition focuses on projects designed to meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on August 31, 2000 (65 FR 52996). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application that is otherwise eligible for funding under this competition based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under the competition. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html>.

Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA numbers 84.129A, 84.129C, and 84.129L. Applicants must submit a separate application for each priority area in which they are interested.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202-2550. Telephone: (202) 205-8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, U.S. Department of Education, Rehabilitation Services Administration, 61 Forsyth Street SW., Suite 19T91, Atlanta, GA 30303. Telephone: (404) 562-6336. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: 29 U.S.C. 772.

Date: June 1, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitative Research.

[FR Doc. 01-14223 Filed 6-5-01; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.264B]

Rehabilitation Continuing Education Programs (RCEP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: To support training centers that serve either a Federal region or another geographical area and provide for a broad, integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions

of higher education. Applications under this notice are invited for the provision of training for Department of Education Regions II, IV, and X only.

Applications Available: June 29, 2001.

Deadline for Transmittal of

Applications: August 31, 2001.

Deadline for Intergovernmental

Review: October 30, 2001.

Estimated Available Funds: The Administration has requested \$39,629,000 for the Rehabilitation Training Program for FY 2002, of which an estimated \$1,499,500 would be allocated for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: This competition is being conducted in FY 2001 for grants that will be awarded using FY 2002 funds.

Estimated Range of Awards:

\$475,000—\$500,000.

Estimated Average Size of Awards:

\$499,000.

Maximum Awards by Rehabilitation Services Administration (RSA) Region:

We will reject any application that proposes a budget exceeding the following stated maximum award amount for a single budget period of 12 months.

Maximum Level of Awards by RSA Region

Region II—\$500,000

Region IV—\$500,000

Region X—\$499,000

Estimated Number of Awards

Region II—1

Region IV—1

Region X—1

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

(1) A page is 8.5 inches by 11 inches, on one side only, with 1-inch margins at the top, bottom, and both sides.

(2) Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

(3) Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 389.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this competition, we use the selection criteria in 34 CFR 385.31 and 389.30. The selection criteria to be used for this competition will be provided in the application package for this competition.

The maximum score for all these criteria is 100 points; however, we will also use the competitive preference priority so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Priority

Competitive Preference Priority

This competition focuses on projects designed to meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on August 31, 2000 (65 FR 52996). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application that is otherwise eligible for funding under this competition based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under the competition. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

For Applications Contact: Education Publications Center (ED Pubs), PO Box

1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html>.

Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.264B.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202-2550. Telephone: (202) 205-8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

For Information Contact: Michael Winter, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332 Switzer Building, Washington, DC 20202-2649. Telephone: (202) 205-8286. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: 29 U.S.C. 772.

Dated: June 1, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitative Research.

[FR Doc. 01-14224 Filed 6-5-01; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, June 16, 2001 8:30 a.m.-12 noon

ADDRESSES: Fernald Environmental Management Project Site, Services Building Conference Room, 7400 Willey Road Hamilton, OH 45219.

FOR FURTHER INFORMATION CONTACT:

Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971-0030 or (513) 648-6478, or e-mail: djsarno@theperspectivesgroup.com.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m. Call to Order
8:30-9:00 a.m. Chair's Remarks and Ex Officio Announcements
9:00-9:30 a.m. Update on Waste Pits Health Issues
9:30-9:45 a.m. Update on Direct Rail Pilot Study
9:45-10:00 a.m. Break
10:00-10:30 a.m. Overview of Design Competition and Feasibility Study
10:30-11:15 a.m. Overview of Site Facility Needs and Potential for Integration with Stewardship
11:15-11:30 a.m. Update on Rebaselining
11:30-11:45 a.m. New Member Recruitment Status
11:45-12:00 noon Public Comment session
12:00 noon Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either

before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This Notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS-76, Post Office Box 538704, Cincinnati, OH 43253-8704, or by calling the Advisory Board at (513) 648-6478.

Issued at Washington, DC on May 31, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01-14220 Filed 6-5-01; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

High Energy Physics Advisory Panel; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, July 13, 2001; 9 a.m. to 6 p.m. and Saturday, July 14, 2001; 8:30 a.m. to 4 p.m.

ADDRESSES: Silvertree Hotel, Cabaret Room, 100 Elbert Lane, Snowmass Village, Colorado 81615.

FOR FURTHER INFORMATION CONTACT: Glen Crawford, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901

Germantown Road; Germantown, Maryland 20874-1290; Telephone: 301-903-9458

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Friday, July 13, 2001, and Saturday, July 14, 2001

- Discussion of Department of Energy High Energy Physics Programs
- Discussion of National Science Foundation Elementary Particle Physics Program
- Discussion of High Energy Physics University Programs
- Reports on and Discussion of U.S. Large Hadron Collider Activities
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Glen Crawford, 301-903-9458 or Glen.Crawford@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. This Notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E-190; Forrestal Building; 1000 Independence Avenue, SW; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 31, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01-14221 Filed 6-5-01; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on June 14 and 15, 2001, at the headquarters of the IEA in Paris, France in connection with a meeting of the IEA's Standing Group on Emergency Questions (SEQ).

FOR FURTHER INFORMATION CONTACT:

Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202-586-6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on June 14 and 15, 2001, beginning at approximately 9:15 a.m. on June 14. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on June 14 and 15, including a preparatory encounter among company representatives from approximately 9:15 a.m. to 9:30 a.m. on June 14.

The Agenda for the preparatory encounter among company representatives is to elicit views regarding items on the SEQ's Agenda. The Agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 101st Meeting
3. Report on the IEA Millennium Conference and Security Issues of the Ministerial Meeting
4. The SEQ Program of Work
 - The Year 2002 Work Program of the SEQ
5. Measures to Ensure Compliance with IEA Stockholding Commitments
6. Unavailable Stocks
7. The Current Oil Market Situation
 - Report on the Oil Market Situation
 - Oil Market Transparency Initiatives
8. Oil Stock Ticket Systems in IEA Member Countries
 - Questionnaire Response of Member Countries
9. Emergency Response Procedures
 - Transition from CERM (Coordinated

- Emergency Response Measures) to IEP (International Energy Program) measures
10. Current IAB Activities
 11. Questionnaire for Emergency Response Reviews
 12. Emergency Response Training and Simulation Exercise
 - Initial Proposal for the Emergency Response Training Simulation Exercise 2002 (ERE 2)
 13. Policy and Legislative Developments in Member Countries
 - Greece
 - Italy
 - Japan
 - Portugal
 - The Netherlands
 - Others
 14. Policy and Legislative Developments in Candidate Countries
 - Korea's Accession to the IEA
 - Others
 15. Oil Security Developments in Non-Member Countries
 - Oil Security Cooperation with China: Next Steps
 - Other Initiatives and Events
 16. Emergency Reserve Issues
 - Emergency Reserve and Net Import Situation of IEA Countries on April 1, 2001
 - Emergency Reserve Situation of IEA Candidate Countries
 17. Emergency Data System and Related Questions
 - Monthly Oil Statistics March 2001
 - Base Period Final Consumption 2Q00/1Q01
 - Quarterly Oil Forecast—Current Quarter 2Q2001
 18. Dispute Settlement Center—Panel of Arbitrators
 19. Other Business
 - Dates of Next Meetings: November 12–13, 2001, March 4–7, 2002, June 25–27, 2002

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, 31, 2001.

Eric J. Fygi,

Deputy General Counsel.

[FR Doc. 01–14219 Filed 6–5–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1629–000]

Atlantic City Electric Company; Notice of Issuance of Order

May 31, 2001.

Atlantic City Electronic Company (Atlantic City) submitted for filing a rate schedule under which Atlantic City will engage in wholesale electric power and energy transactions at market-based rates. Atlantic City also requested waiver of various Commission regulations. In particular, Atlantic City requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Atlantic City.

On May 23, 2001, 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 Atlantic City 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 to be heard in opposition within this period, Atlantic City is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, 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 Atlantic City'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 June 22, 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).

[/www.ferc.fed.us/online/rims.htm](http://www.ferc.fed.us/online/rims.htm) (call 202–208–2222 for assistance).

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,

Secretary.

[FR Doc. 01–14211 Filed 6–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1627–000]

Delmarva Power & Light Company; Notice of Issuance of Order

May 31, 2001.

Delmarva Power & Light Company (Delmarva) submitted for filing a rate schedule under which Delmarva will engage in wholesale electric power and energy transactions at market-based rates. Delmarva also requested waiver of various Commission regulations. In particular, Delmarva requested that the Commission grant blanket approval under 18 CFR Part 34 of future issuances of securities and assumptions of liability by Delmarva.

On May 23, 2001, pursuant to delegated authority, the Director, Division of Corporation 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 Delmarva 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 to be heard in opposition within this period, Delmarva 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 Delmarva'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 June 22, 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).

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,
Secretary.

[FR Doc. 01-14214 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01-13-000]

DeSoto Pipeline Company, Inc.; Notice of Rate Election and Rate Petition

May 31, 2001.

Take notice that on May 1, 2001, DeSoto Pipeline Company, Inc. (DeSoto) filed pursuant to Section 284.123(b)(1) and 284.123(b)(2) of the Commission's regulations, a notice of rate election advising the Commission of DeSoto's intended use an existing state approved transportation rate as a fair and equitable proposed rate for interruptible transportation services being provided pursuant to Section 311 of the NGPA, together with a request for the Commission to establish a transportation rate for Section 311 service on a certain portion of its system, as well as certain additional compression and fuel retention percentages applicable at specific delivery points on the DeSoto system. DeSoto's mailing address is 1201 Diary Ashford, Suite 190, Houston, Texas 77079.

DeSoto states that it is an intrastate pipeline company within the meaning of Section 2(16) of the NGPA, 15 U.S.C. 3301(16). DeSoto will provide interruptible transportation service pursuant to Section 31(a)(2) of the NGPA through its facilities located in

Texas. This petition is intended to establish a new system-wide maximum transportation rate for Section 311(a)(2) service.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the Petition's filing date, the rates proposed therein will be deemed to be fair and equitable and not in excess of an amount that interstate pipelines would be permitted to charge for similar services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before June 14, 2001. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,
Secretary.

[FR Doc. 01-14205 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184-065 California]

El Dorado Irrigation District; Notice of Public Meeting

May 31, 2001.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), which was filed on February 22, 2000. The El Dorado Project, Licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California. The

project occupies lands of the Eldorado National Forest.

The EID has requested that the commission provide facilitation services to assist the parties in arriving at a settlement of all issues relevant to this proceeding. Commission staff held a meeting on April 3, 2001. The purpose of this second meeting is to continue to discuss alternatives for processing the application for relicensing of the El Dorado Project, including whether a consensus exists among the parties for pursuing settlement options. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in this meeting.

The meeting will be held on Tuesday, June 26, 2001, from 9 a.m. until 4 p.m. in the Cal EPA Building (Room 1610-16th floor) located at 1001 "I" Street (10th and I), Sacramento, California.

For further information, please contact Elizabeth Molloy at (202) 208-0771 or John Mudre at (202) 219-1208.

David P. Boergers,
Secretary.

[FR Doc. 01-14197 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-2106-000]

Entergy Services, Inc.; Notice of filing

May 25, 2001.

Take notice that on May 22, 2001, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing an Interconnection and Operating Agreement with GenPower Keo, LLC (GenPower), and a Generator Imbalance Agreement with GenPower.

Any person desiring to be heard or to protest such filing 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). All such motions and protests should be filed on or before June 12, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the

Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01-14206 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-1675-000]

Entergy Solutions Supply Ltd.; Notice of Issuance of Order

May 31, 2001.

Entergy Solutions Supply Ltd. (Entergy Supply) submitted for filing a rate schedule under which Entergy Supply will engage in wholesale electric power and energy transactions at market-based rates. Entergy Supply also requested waiver of various Commission regulations. In particular, Entergy Supply requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Entergy Supply.

On May 23, 2001, 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 Entergy Supply 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 to be heard in opposition within this period, Entergy Supply 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 Entergy Supply'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 June 22, 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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,

Secretary.

[FR Doc. 01-14215 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-424-000]

KN Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

May 31, 2001.

Take notice that on May 25, 2001, KN Wattenberg Limited Liability Co. (KN Wattenberg) tendered for filing to become part of KN Wattenberg's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, proposed to be effective June 25, 2001:

Third Revised Sheet No. 17
Fifth Revised Sheet No. 22
Second Revised Sheet No. 80
Second Revised Sheet No. 96
First Revised Sheet No. 98
Second Revised Sheet No. 99
Third Revised Sheet No. 100
Second Revised Sheet No. 100B

KN Wattenberg is making this filing to change references to "DART" and KN Wattenberg's "Electronic Bulletin Board" to "Interactive Web Site" in its tariff.

KN Wattenberg states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,

Secretary.

[FR Doc. 01-14201 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-382-000]

Northern Natural Gas Company; Notice of Technical Conference

May 31, 2001.

In the Commission's order issued on May 17, 2001,¹ the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Monday, June 25, 2001, at 1 p.m., in a room to be designated, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01-14202 Filed 6-5-01 8:45 am]

BILLING CODE 6717-01-M

¹ Northern Natural Gas Co., 95 FERC ¶ 61,238 (2001).

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP01-427-000]****PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing**

May 31, 2001.

Take notice that on May 24, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, Seventh Revised Sheet No. 90, with an effective date of July 1, 2001.

GTN states that the filing is being made in order to reformat references to capacity release options consistent with GTN's implementation of a new web-based customer interface and capacity release module.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,*Secretary.*

[FR Doc. 01-14199 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP01-425-000]****PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing**

May 31, 2001.

Take notice that on May 23, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, Twenty-seventh Revised Sheet No. 5. GTN requests that the above-referenced tariff sheet become effective July 1, 2001.

GTN asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1-A of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages." These tariff changes reflect that GTN's fuel and line loss surcharge percentage will decrease to 0.0000% per Dth per pipeline-mile for the six-month period beginning July 1, 2001. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web

site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,*Secretary.*

[FR Doc. 01-14200 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP01-233-001]****Questar Pipeline Company; Notice of Tariff Filing**

May 31, 2001.

Take notice that on May 23, 2001, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of March 23, 2001:

Substitute Sixth Revised Sheet No. 52
Substitute Fifth Revised Sheet No. 56
Substitute Second Revised Sheet No. 56A
Substitute Sixth Revised Sheet No. 79

On February 21, 2001, Questar filed tariff sheets in Docket No. RP01-233-000 that were approved by Commission letter order issued March 28, 2001, to be effective March 23, 2001. This filing reflects repagination of tariff sheets due to the inclusion of language approved in two subsequent proceedings.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah, and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,
Secretary.

[FR Doc. 01-14204 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01-1663-000 and ER01-1663-001; Docket Nos. EL01-62-000 and EL01-62-001; Docket Nos. NJ01-3-000 and NJ01-3-001]

Sierra Southwest Cooperative Services, Inc., Southwest Transmission Cooperative, Inc., Notice of Issuance of Order

May 31, 2001.

On April 11, 2001, as amended on April 13, 2001, Sierra Southwest Cooperative Services, Inc. (Sierra) and Southwest Transmission Cooperative, Inc. filed a joint application related to the corporate restructuring of Arizona Electric Power Cooperative, Inc. Sierra seeks Commission authorization for a rate schedule for the wholesale sale of electric energy and capacity at market-based rates, and for a Resource Integration Agreement governing certain of its wholesale power sales. Sierra also sought certain blanket approvals and waivers of the Commission's regulations. In particular, Sierra requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Sierra. On May 30, 2001, the Commission issued an Order Accepting For Filing Market-Based Rates, Granting Petition For Declaratory Order, Finding Reciprocity Tariff Acceptable, And Waiving Filing Fee (Order), in the above-docketed proceedings.

The Commission's May 30, 2001 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J).

(G) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Sierra 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.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, Sierra is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Sierra, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Sierra's issuances of securities or assumptions of liabilities.

* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 29, 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).

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,
Secretary.

[FR Doc. 01-14212 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-1633-000]

Southern Company-Florida LLC; Notice of Issuance of Order

May 31, 2001.

Southern Company-Florida LLC (Southern-Florida) submitted for filing a rate schedule under which Southern-Florida will engage in wholesale electric power and energy transactions at market-based rates. Southern-Florida also requested waiver of various Commission regulations. In particular, Southern-Florida requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Southern-Florida.

On May 23, 2001, 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 Southern-Florida 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 to be heard in opposition within this period, Southern-Florida 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 Southern-Florida'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 June 22, 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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,
Secretary.

[FR Doc. 01-14213 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP01-433-000]****Summit Power NW, LLC, Complainant, v. Portland General Electric Company, Respondent; Notice of Complaint**

May 31, 2001.

Take notice that on May 29, 2001, Summit Power NW LLC filed a Complaint Requesting Fast Track Processing, under Section 205 of the Natural Gas Act (15 U.S.C. 717d) and Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), requesting that the Commission issue an order (1) finding that Summit is entitled to interconnect with the Kelso-Beaver Pipeline (K-B Pipeline); (2) requiring PGE to file for its Part 284 open access blanket transportation certificate and respond to Summit's request for firm capacity no later than June 15, 2001; (3) determining that available capacity to serve Summit's proposed power project exists on K-B Pipeline; and (4) requiring PGE to immediately consider Summit's request for transportation service in PGE's plans for expansion of the available capacity on the K-B Pipeline.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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). All such motions or protests must be filed on or before June 8, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222) for assistance. Answers to the complaint shall also be due on or before June 8, 2001.

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,
Secretary.

[FR Doc. 01-14198 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP01-278-000]****Texas Gas Transmission Corporation; Notice of Technical Conference**

May 31, 2001.

On March 22, 2001, Texas Gas Transmission Corporation (Texas Gas) filed in Docket No. RP01-278-000 a proposal to change its Cash-out mechanism. Several parties have protested various aspects of Texas Gas filing.

Take notice that a technical conference to discuss the various issues raised by Texas Gas' filing will be held on Tuesday, June 12, 2001, beginning at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Persons protesting aspects of Texas Gas's filing should be prepared to answer questions and discuss alternatives. Issues pertaining to Texas Gas' filing with respect to historical under recovered costs will not be discussed.

All interested persons are permitted to attend.

David P. Boergers,
Secretary.

[FR Doc. 01-14203 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. GT95-11-002]****Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report**

May 31, 2001.

Take notice that on May 18, 2001, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing its report of activities regarding collection of Kansas ad valorem taxes. The report covers refund obligations attributable to tax bills rendered to Williams after June 28, 1988 only.

Williams states that pursuant to the August 7, 2000 Settlement Agreement and subsequent Order Granting Clarification, Williams will make its annual refund report regarding collections under Docket No. RP98-52 on May 31, 2001.

Williams states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations (18 CFR 385.211). All such protests must be filed on or before June 8, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,
Secretary.

[FR Doc. 01-14196 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER01-1833-000, et al.]****Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings**

May 31, 2001.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER01-1833-000]

Take notice that on May 25, 2001, Commonwealth Edison Company (ComEd) tendered for filing a Notice of Withdrawal of the proposed amendments to Attachment K of its Open Access Transmission Tariff filed in the above-referenced proceeding on April 20, 2001.

Copies of this filing were served on all affected customers under ComEd's

OATT, upon the regulatory commissions of Illinois and Indiana and upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER01-2116-000]

Take notice that on May 25, 2001, Southern California Edison Company (Edison) tendered for filing a one-time billing adjustment for the 2000-2001 Delivery Year made pursuant to the formula rate contained in the Environmental Energy Storage Agreement (Agreement) between SCE and the Department of Energy—Bonneville Power Administration (BPA).

Copies of this filing were served upon the Public Utilities Commission of the State of California and BPA.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER01-2117-000]

Take notice that on May 25, 2001, PJM Interconnection, L.L.C. (PJM), tendered for filing (i) an executed agreement for firm point-to-point transmission service with Engage Energy America LLC (Engage); and (ii) an executed agreement for non-firm point-to-point transmission service with Engage.

Copies of this filing were served upon Engage and the state commissions within the PJM control area.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER01-2118-000]

Take notice that on May 25, 2001, Southern California Edison Company (SCE) tendered for filing a Service Agreement For Wholesale Distribution Service (Service Agreement) under SCE's Wholesale Distribution Access Tariff between SCE and The Metropolitan Water District of Southern California (MWD). The Service Agreement specifies the terms and conditions pursuant to which SCE will provide wholesale Distribution Service to MWD for up to 39.6 MW of generation produced by MWD's Diamond Valley Lake Small Conduit Hydroelectric Project. SCE requests that the Service Agreement become effective on May 21, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California and MWD.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER01-2119-000]

Take notice that on May 25, 2001, Southern California Edison Company (SCE) tendered for filing the Interconnection Facilities Agreement (Agreement) between SCE and Harbor Cogeneration Company (Harbor).

SCE requests that the Agreement become effective on May 26, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Harbor.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER01-2120-000]

Take notice that on May 25, 2001, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Enron Power Marketing, Inc. (Enron) under Tampa Electric's market-based sales tariff. Tampa Electric proposed that the service agreement be made effective on April 30, 2001.

Copies of the filing have been served on Enron and the Florida Public Service Commission.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER01-2121-000]

Take notice that on May 25, 2001, Wisconsin Public Service Corporation (WPSC) tendered for filing a revised partial requirements service agreement with Upper Peninsula Power Company (UPPCO). First Revised Service Agreement No. 11 provides UPPCO's contract demand nominations for January 2002-December 2002, under WPSC's W-2A partial requirements tariff.

The company states that copies of this filing have been served upon WIEC and to the State Commissions where WPSC serves at retail.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Ameren Services Company

[Docket No. ER01-2122-000]

Take notice that on May 25, 2001, Ameren Services Company (ASC) tendered for filing a Transmission

System Interconnection Agreement and Parallel Operating Agreement between ASC and Ameren Energy Development Company. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy Development Company pursuant to Ameren's Open Access Transmission Tariff.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER01-2123-000]

Take notice that on May 25, 2001, Ameren Services Company (ASC) tendered for filing a Transmission System Interconnection Agreement and Parallel Operating Agreement between ASC and Ameren Energy Generating Company and Ameren Energy Development Company.

ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy Generating Company and Ameren Energy Development Company pursuant to Ameren's Open Access Transmission Tariff.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. The Dayton Power and Light Company

[Docket No. ER01-2124-000]

Take notice that on May 25, 2001, The Dayton Power and Light Company (Dayton) tendered for filing service agreements establishing Calpine Energy Services, LP, Axia Energy, LP, Exelon Generation Company, LLC as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon with Calpine Energy Services, L.P., Axia Energy, LP, Exelon Generation Company, LLC and the Public Utilities Commission of Ohio.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Michigan Electric Transmission Company

[Docket No. ER01-2125-000]

Take notice that on May 24, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing a First Revised Service Agreement No. 22 (Agreement) with Consumers Energy Company (Customer)

under its Electric Tariff FERC No. 1 with a proposed effective date of April 1, 2001.

The revisions consist of certain additional terms related to Consumers' Palisades Nuclear Generating Plant. The filing was served upon the Customer and the Michigan Public Service Commission.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Michigan Electric Transmission Company

[Docket No. ER01-2126-000]

Take notice that on May 24, 2001 Michigan Electric Transmission Company (Michigan Transco) tendered for filing an unexecuted Generator Interconnection and Operating Agreement Between Consumers and Montcalm County Renaissance Trust [Generator] (Agreement). Generator had requested that the unexecuted Agreement be filed. Consumers requested that the Agreement be allowed to become effective April 27, 2001.

Copies of the filing were served upon Generator and the Michigan Public Service Commission.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER01-2127-000]

Take notice that on May 24, 2001 PJM Interconnection, L.L.C. (PJM), tendered for filing an executed interconnection service agreement between PJM and Middlesex Generating Company, LLC, and two executed interim interconnection service agreements between PJM and Mirant Americas Energy Marketing, L.P.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM control area.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER01-2128-000]

Take notice that on May 23, 2001, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing six

copies of a Notice of Termination for Short-Term and Non-Firm Point-To-Point Transmission Service Agreements between Entergy Services and Engage Energy US, L.P. (now known as El Paso Merchant Energy, L.P.).

Comment date: June 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Holt Company of Ohio

[Docket No. ER01-2129-000]

Take notice that on May 24, 2001, Holt Company of Ohio (Holt), tendered for filing for acceptance of Holt's FERC Electric Tariff, Original Volume Number 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Holt requests an effective date no later than June 1, 2001.

Holt intends to engage in wholesale electric power and energy purchases and sales as a power marketer. Holt is an Ohio corporation headquartered in Columbus, Ohio. Holt is currently engaged in the selling, leasing, and servicing of, inter alia, power systems equipment.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Central Maine Power Company

[Docket No. ER01-2130-000]

Take notice that on May 24, 2001, Central Maine Power Company (CMP) tendered for filing a service agreement for Local Network Transmission Service (LNTS) entered into with Calpine Construction Finance Company, L.P. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP-FERC Electric Tariff, Fifth Revised Volume No. 3, Service Agreement Number 126.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Progress Energy, Inc. on behalf of Florida Power Corporation

[Docket No. ER01-2131-000]

Take notice that on May 24, 2001, Florida Power Corporation (FPC) tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Axia Energy, LP. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC.

FPC is requesting an effective date of May 23, 2001 for the Service Agreements.

A copy of the filing was served upon the Florida Public Service Commission.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER01-2132-000]

Take notice that on May 24, 2001, the California Independent System Operator Corporation, (ISO) tendered for filing a Participating Generator Agreement between the ISO and The Metropolitan Water District of Southern California for acceptance by the Commission.

The ISO states that this filing has been served on The Metropolitan Water District of Southern California and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 15, 2001.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER01-2133-000]

Take notice that on May 24, 2001, the California Independent System Operator Corporation, (ISO) tendered for filing a Participating Generator Agreement between the ISO and Mountain View Power Partners II, L.L.C. for acceptance by the Commission.

The ISO states that this filing has been served on Mountain View Power Partners, II, L.L.C. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 15, 2001.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. California Independent System Operator Corporation

[Operator Docket No. ER01-2134-000]

Take notice that on May 24, 2001, the California Independent System Operator Corporation, (ISO) tendered for filing a Participating Generator Agreement between the ISO and Mountain View Power Partners II, L.L.C. for acceptance by the Commission.

The ISO states that this filing has been served on Mountain View Power Partners, II, L.L.C. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 15, 2001.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. California Independent System Operator Corporation

[Docket No. ER01-2135-000]

Take notice that on May 24, 2001, the California Independent System Operator Corporation, (ISO) tendered for filing a Participating Generator Agreement between the ISO and The Metropolitan Water District of Southern California for acceptance by the Commission.

The ISO states that this filing has been served on The Metropolitan Water District of Southern California and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 15, 2001.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. California Independent System Operator Corporation

[Docket No. ER01-2136-000]

Take notice that on May 24, 2001, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Georgia-Pacific West, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Georgia-Pacific West, Inc., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective May 15, 2001.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. California Independent System Operator Corporation

[Docket No. ER01-2137-000]

Take notice that on May 24, 2001, the California Independent System Operator Corporation, (ISO) tendered for filing a Participating Generator Agreement between the ISO and Georgia-Pacific West, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Georgia-Pacific West, Inc., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 15, 2001.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Capital Energy, Inc.

[Docket No. ER01-2138-000]

Take notice that on May 24, 2001, Capital Energy, Inc. (Capital) tendered for filing for acceptance of Capital Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Capital intends to engage in wholesale electric power and energy purchases and sales as a marketer. Capital is not in the business of generating or transmitting electric power.

Comment date: June 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Somerset Windpower LLC

[Docket No. ER01-2139-000]

Take notice that on May 25, 2001, Somerset Windpower LLC (Somerset), tendered for filing for authority to sell electricity at market-based rates under Section 205(a) of the Federal Power Act, 16 U.S.C. § 824d(a); for granting of certain blanket approvals and for the waiver of certain Commission regulations.

Somerset is a limited liability company that proposes to engage in the wholesale sale of electric power in the state of Pennsylvania.

Comment date: June 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Somerset Windpower, LLC

[Docket No. EG01-219-000]

Take notice that on May 25, 2001, Somerset Windpower, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 356 of the Commission's regulations (18 CFR Part 356).

Somerset is developing a wind-powered eligible facility with a capacity of 9 megawatts, powered by approximately six (6) wind turbine generators, which will be located in Somerset County, Pennsylvania.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

27. Niagara Mohawk Power Corporation

[Docket No. ES01-34-000]

Take notice that on May 25, 2001, Niagara Mohawk Power Corporation submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue and renew, on or before June 30, 2003, short-term notes and other obligations in an aggregate principal amount outstanding not to exceed \$700 million at any time.

Comment date: June 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,

Secretary.

[FR Doc. 01-14195 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

May 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12007-000.

c. *Date Filed:* April 26, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Alamo Dam Hyroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Bill Williams River in La Paz County, Arizona. Part of the project would be on lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745-8630, (fax) (208) 745-7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219-2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, interventions, and protests, may be electronically filed via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the existing Corps of Engineers' Alamo Dam would consist of: (1) a 90-inch-diameter 1,300-foot-long steel penstock; (2) a powerhouse containing one generating unit with an installed capacity of 7.4MW; (3) a 25 kv transmission line approximately 8 miles long; and (6) appurtenant facilities.

The project would have an annual generation of 32 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington,

DC 20426, or by calling (202) 208-1371. The application may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01-14207 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests**

May 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12004-000.

c. *Date Filed:* April 26, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* San Vicente Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the City of San Diego, California, on the Upper Salinas River in San Diego County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745-8630, (fax) (208) 745-7979, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219-2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, recommendations, interventions, and protests, may be electronically filed via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) an existing 190-foot high and 940-foot

long earthfill dam; (2) an existing reservoir having a surface area of 1,069 acres with a storage capacity of 90,200 acre-feet at a normal water surface elevation of 560 feet msl; (3) a 10-foot-diameter 300-foot-long steel penstock; (4) a powerhouse containing one generating unit with an installed capacity of 2 MW; (5) a 15 kv transmission line approximately 3 miles long; and (6) appurtenant facilities.

The project would have an annual generation of 13.3 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208-1371. The application may be viewed on <http://www.ferc.fed.us/online.rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be

served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impact. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01-14208 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

May 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11994-000.

c. *Date Filed:* April 23, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Goodwin Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the Oakland and San Joaquin Irrigation, District, on the Stanislaus in Calaveras County, California. Part of the project would be on lands administered by the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745-8630, (fax) (208) 745-7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219-2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, interventions, and protests, may be electronically filed via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener

files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The project proposed project would consist of: (1) an existing earthfill dam 101-foot high and 460-foot-long; (2) an existing reservoir having a surface area of 70 acres with a storage capacity of 500 acre-feet at a normal water surface elevation of 4,800 feet msl; (3) a 10-foot diameter 300-foot-long steel penstock; (4) a powerhouse containing two generating units with a total installed capacity of 3 MW; (5) a 15 kv transmission line approximately 3 miles long; and (6) appurtenant facilities.

The project would have an annual generation of 25.2 GWh.

1. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208-1371. The application may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,
Secretary.

[FR Doc. 01-14209 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions to Intervene

May 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11978-000.

c. *Date filed:* April 20, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Vega Dam Hydroelectric Project would be located on Plateau Creek in Mesa County, Colorado. The project would utilize the U.S. Bureau of Reclamation's existing Vega Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745-8630.

h. *FERC Contact:* James Hunter, (202) 219-2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Please include the project number (P-11978-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Vega Dam, would consist of: (1) a proposed 300-foot-long, 4-foot-diameter steel penstock; (2) a proposed concrete powerhouse containing one 2.5-megawatt generating unit; (3) a proposed 3-mile-long, 15-kV transmission line; and (4) appurtenant facilities. The project would have an average annual generation of 10.9 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208-1371. The application may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit—*Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit—*Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent—*A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit—*A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene—*Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents—*any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01-14210 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL01-5-000 and RM99-2-000]

Conference on RTO Interregional Coordination; Regional Transmission Organizations; Notice of Technical Conference and Change in Docket Designation

May 31, 2001.

On December 15, 2000, the Electric Power Supply Association, *et al.*, filed a motion requesting the Commission to convene a technical conference to provide guidance on implementation of Function 8 of Order No. 2000—Interregional Coordination, as it applies to Regional Transmission Organizations (RTOs). By notice issued March 28, 2001, in Docket No. RM99-2-000, comments were sought on this motion.

Take notice that a technical conference will be held on June 19, 2001, at 10 a.m., in a room to be designated, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All future actions with respect to this conference will be taken under Docket No. PL01-5-000.

The purpose of the conference will be to discuss interregional coordination between RTOs. All interested parties and Staff are permitted to attend. Anyone interested in making a statement at this conference should file a request to speak in Docket No. PL01-5-000 no later than June 8, 2001. Further details about the conference will be provided in a subsequent notice.

David P. Boergers,

Secretary.

[FR Doc. 01-14216 Filed 6-5-01; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6992-2]

Request for Nominations to the Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations to federal advisory committee.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to be considered for appointment to fill vacancies on the Good Neighbor Environmental Board, a federal advisory committee whose focus is sustainable development along the U.S.-Mexico border.

FOR FURTHER INFORMATION AND TO SUBMIT

NOMINATIONS CONTACT: Elaine M. Koerner, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue N.W., Washington, D.C. 20004; telephone 202-564-1484; fax 202-501-0661; email koerner.elaine@epa.gov.

SUPPLEMENTARY INFORMATION: The Good Neighbor Environmental Board is an independent federal advisory committee charged with advising the President and Congress on environmental and infrastructure practices along the U.S. border with Mexico. It was authorized under Section 6 of the Enterprise for the Americas Initiative Act, 7 U.S.C. 5404. Under Executive Order 12916, the EPA Administrator was delegated authority to administer the activities of the Board.

Good Neighbor has 24 Board members, including 16 non-federal members and 8 members from federal agencies. Federal agency members are appointed by the heads of their agencies. Non-federal members are appointed by the Administrator of EPA for a two year term, with the possibility of reappointment. The Board meets three times a year in different U.S. border communities and produces an annual report to the President and Congress. Between meetings, Board members continue their work through teleconference calls and e-mail.

Currently, there are 3 non-federal vacancies on the Board for which applications are being sought by EPA. The application process is open to all interested parties. To help maintain a balanced and diverse nonpartisan perspective, non-federal Board members continue to be recruited from all four U.S. border states and span all levels of

government as well as the private sector, non-profit groups, and academic institutions. Recruitment is an ongoing process.

At the present time, given the composition of the Board and EPA's continued commitment to diversity and balance, EPA is especially interested in receiving applications from individuals with the following types of skills, expertise, and perspectives: maquiladora businesses, local governments, tribes, grassroots citizens' coalitions, ranching and grazing interests, and energy sector expertise. Those who live and work in border communities, have cross-border experience and networks, offer specific cultural perspectives, and are bilingual also are especially welcome to apply for membership. EPA Administrator Christine Todd Whitman makes the final recruitment decisions.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee and the nominee's current business address, daytime telephone number, fax, and e-mail address.

Dated: May 29, 2001.

Elaine M. Koerner,

Designated Federal Officer.

[FR Doc. 01-14250 Filed 6-5-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6992-3]

National Advisory Council for Environmental Policy and Technology Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy and management issues.

NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing.

The NACEPT is addressing the identification of emerging issues and

trends facing the Agency over the next five to ten years. The NACEPT Council will develop the processes it will use to operate as a strategic panel and identify emerging trends and issues.

DATES: The NACEPT will hold a 2-day public meeting on Wednesday, July 18, from 8:30 a.m. to 5 p.m. and Thursday, July 19, 2001 from 8:30 a.m. to 4 p.m.

ADDRESSES: The NACEPT 2-day public meeting will be held at the Radisson Hotel—Old Town Alexandria, Alexandria, VA. Materials or written comments may be transmitted to the Council through Gwendolyn Whitt, Designated Federal Officer/NACEPT, U.S. EPA, Office of Cooperative Environmental Management (1601A), 1200 Pennsylvania Avenue NW, Washington, D.C. 20460.

The public will have an opportunity to make comments directly to the Council during the first day of the meeting. Oral comments will be limited to a total time of five minutes. Requests to make oral comments must be submitted no later than July 9, 2001 to Gwendolyn Whitt, at the address above or faxed to (202)–501–0661. Anyone who has not reserved time in advance, may make comments during the public comment period as time allows.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer, NACEPT, at (202)–564–9741.

Dated: May 29, 2001.

Tim Sherer,

Deputy Director (Acting), Office of Cooperative Environmental Management.
[FR Doc. 01–14251 Filed 6–5–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6992–4]

Good Neighbor Environmental Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Good Neighbor Environmental Board, a federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place July 25–26 in San Diego, California. The meeting is open to the public. It is the second of three Good Neighbor meetings that will take place along the border during 2001.

DATES: The meeting will take place on July 25–26.

ADDRESSES: The meeting will take place at the Horton Grand Hotel, Three-Eleven Island Avenue, San Diego, California, 92101.

SUPPLEMENTARY INFORMATION:

Agenda

The theme for this meeting is water. During the morning of July 25th, the Board will hear presentations on this topic from a diverse group of invited speakers representing government, the private sector, and the public sector. These presentations will be followed by a public comment session that will take place before lunch. During this session, attendees will be encouraged to speak briefly about their own concerns and priorities for their communities as well as the wider border region.

Following lunch, the meeting will continue with several additional speakers discussing other border-region environmental topics. Then Board members will report out on recent developments within their respective sectors. The balance of the day, as well as the following morning, primarily will be devoted to ongoing Board business such as strengthening outreach and preparations for the Board's next advisory report. The meeting will end at noon on July 26th.

Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session on the morning of July 25th are encouraged to contact the Designated Federal Officer for the Board prior to the meeting.

Background

The Good Neighbor Environmental Board was created by the Enterprise for the Americans Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The Board meets three times annually, primarily in various border locations. The U.S. Environmental Protection

Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

FOR FURTHER INFORMATION CONTACT:

Elaine M. Koerner, Designated Federal Officer for the Good Neighbor Environmental Board, Office of Cooperative Environmental Management, Office of the Administrator, USEPA, MC1601A, 1200 Pennsylvania Ave., NW., Washington, DC 20004, (202) 564–1484, koerner.elaine@epa.gov.

Dated: May 25, 2001.

Elaine M. Koerner,

Designated Federal Officer.

[FR Doc. 01–14252 Filed 6–5–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00316; FRL–6784–8]

Forum on State and Tribal Toxics Action (FOSTTA); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: One component (The Tribal Affairs Project) of the Forum on State and Tribal Toxics Action (FOSTTA) will meet June 11–12, 2001. This notice announces the location, times, and some tentative topics for the meeting. The National Conference of State Legislatures (NCSL) and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, NCSL facilitates ongoing efforts of the States and Tribes to identify, discuss, and address toxics-related issues, and to continue the dialogue on how Federal environmental programs can best be implemented.

DATES: The Tribal Affairs Project will meet June 11, 2001, from 8 a.m. to 5 p.m. and June 12, 2001, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA, 22314. The hotel is across from the King Street Metro Station.

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) 260–1761.

For technical information contact:
George Hagevik, National Conference of State Legislatures, 1560 Broadway, Suite 700, Denver, CO 80202; telephone number: (303) 839-0273; Fax: (303) 863-8003; and e-mail address: george.hagevik@ncsl.org.

Darlene Harrod, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260-6904; Fax: (202) 260-2219; and e-mail address: harrod.darlene@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in FOSTTA and hearing more about the perspectives of the Tribes on EPA programs and the information exchange regarding important issues related to human health and environmental exposure to toxics. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. However, in the interest of time and efficiency, the meetings are structured to provide maximum opportunity for State and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. If you have any questions regarding the applicability of this action to a particular entity, consult the technical people listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the NCSL Web site at <http://www.ncsl.org/programs/esnr/fostta/fostta.htm>. To access this document on the EPA Internet Home Page go to <http://www.epa.gov> and select "Laws and Regulations" 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/FOSTTA>.

2. *Facsimile.* Notify the persons listed under **FOR FURTHER INFORMATION CONTACT** if you would like any of the documents sent to you via fax.

III. Purpose of Meeting

The tentative agenda items identified by the Tribes follow:

1. OPPTS tribal strategy.
2. Tribal subsistence summit.
3. Lead-TAS determinations.
4. Other topics as appropriate.

IV. How Can I Request To Participate in this Meeting?

You may submit a request to participate in this meeting in the mail or electronically to the names under the **FOR FURTHER INFORMATION** section. Do not submit any information in your request that is considered Confidential Business Information. Your request must be received by EPA on or before June 7, 2001.

List of Subjects

Environmental protection.

Dated: May 22, 2001.

Clarence O. Lewis, III,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01-13839 Filed 6-5-01; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00721; FRL-6785-7]

State FIFRA Issues Research and Evaluation Group (SFIREG)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on June 25, 2001 and ending June 26, 2001. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, June 25, 2001, from 8:30 a.m. to 5 p.m. and Tuesday, June 26, 2001, from 8:30 a.m. to noon.

ADDRESSES: This meeting will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington--Crystal City, VA.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00721 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, SFIREG Executive

Secretary, P.O. Box 1249, Hardwick, VT 05843-1249; telephone number: (802) 472-6956; fax (802) 472-6957; e-mail address: aapco@plainfield.bypass.com.

Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605-0195; fax number: (703) 308-1850; e-mail address: Mcduffie.Georgia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *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/>. To access this document, 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/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-00721. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit 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 OPP-00721 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-00721. Electronic comments may also be filed online at many Federal Depository Libraries.

D. 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 person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide 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 notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.

To ensure proper receipt by EPA, be sure to identify the docket control 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.

II. Purpose of Meetings

The tentative agenda items identified by the SFIREG follows:

1. Overview pesticide product re-registration for the rest of 2001.
2. NPDES permits—implications of recent court ruling on aquatic pesticide applications.
3. Endangered species: Update on Albuquerque, NM workshop and future direction for state programs.
4. Meeting State's FIFRA training needs—applicability of Eduneering, Inc.'s food safety on-line training model.
5. Regional reports.
6. Committee reports and introduction of issue papers.
7. Update on current OPP activities.
8. SFIREG issue paper status report.
9. Update on current OECA activities.

10. Other topics, as appropriate.
11. Status of mosquito control label review project.

12. FIFRA implications of biosecurity/foot and mouth disease.

List of Subjects

Environmental protection.

Dated: May 22, 2001.

Jay S. Ellenberger,

Acting Division Director, Field and External Affairs Division, Office of Pesticide Programs.
[FR Doc. 01-13838 Filed 6-5-01; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00719; FRL-6783-2]

Receipt of a Notification to Conduct Small-Scale Field Testing of a Genetically-Engineered Microbial Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt from Dr. Brian A. Federick, of the Department of Entomology of the University of California, Riverside, of a notification (57109-NMP-R) of intent to conduct small-scale field testing involving four modified strains of a microorganism, *Bacillus thuringiensis* subsp. *israelensis* H-14, ONR 60A (Bti). These modified strains of Bti have been genetically-engineered to express various combinations of mosquitocidal delta endotoxin proteins from Bti and the mosquitocidal binary protein toxin from *Bacillus sphaericus*. The proposed testing for control of various species of mosquitos will be in tanks and small enclosed artificial ponds. The Agency has determined that this notification may be of regional and national significance. Therefore in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this notification.

DATE: Comments, identified by docket control number OPP-00719, must be received on or before July 6, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00719 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: William R. Schneider, Biopesticides and

Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8683; fax number: (703) 308-7026; e-mail address: schneider.william@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons interested in small-scale field testing of genetically-engineered microbial pesticides or those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be effected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Kind of an Experiment is Described in this Notification?

1. *Purpose.* These field tests are designed to evaluate the use of these new strains of currently registered products in controlling mosquitoes. Laboratory evaluations of these new strains suggest that they will work much better against the mosquitoes that carry the West Nile Virus than the currently used microbial larvaecides. They produce a greater amount of the toxin from *B. sphaericus* (Bsp) and combine its effect with the existing *B. thuringiensis* subsp. *israelensis* (Bti) delta-endotoxins.

2. *Microorganisms.* The recombinant strains were constructed using a well-characterized standard strain, IPS-82 of Bti (available from the Pasture Institute in Paris, France as a reference strain) and a currently EPA-registered strain of Bsp, VectoLex produced by Valent BioSciences. The recombinant strains were prepared from two versions of the IPS-82 strain, one with all the plasmid-borne genes removed except those that produce the mosquitocidal proteins that are found in the registered Bti products (Cry4A, Cry4B, Cry11A, and CytA delta-endotoxin proteins), and another version, with all the plasmid-borne toxin genes removed, that does not produce any mosquitocidal proteins.

The Bsp strain produces a mosquitocidal protein that forms

characteristic crystals during spore formation much like Bti. The genes that produce the Bsp toxin were transferred into the Bti isolates to produce the following four combinations of toxins in Bti: Bsp toxin and the four Bti delta-endotoxins listed above, Bsp toxin only, Bsp toxin and Cyt1A, Bsp toxin and Cry11A plus Cyt1A.

3. *Test protocols.* The three established mosquito testing facilities being used for this test are in California and Florida. The Riverside, California, test site uses 3 x 3 feet fiberglass tubs and several 12 x 24 feet artificial ponds. The test site at the Coachella Valley experiment mosquito testing station in California has 18 x 18 feet artificial ponds. The test site at a University of Florida research center in Apopka, Florida, has 3 feet diameter tubs on a cement slab. All test containers use 1 foot or less water depth. The treatments will be by hand or using hand-held equipment. Treatment (0.007 lbs per) of the modified Bti strains will be applied three times for each of the four test strains at each of the two test sites to the water containers, for a maximum total of less than 0.03 lbs for the Riverside and Florida tubs and less than 4.2 lbs for the Riverside and Coachella Valley artificial ponds. Mosquito larvae and pupae will be monitored up to 30 days following the treatments. The area will be monitored for the presence of the test strains. Tests may be conducted up through November 2001.

4. *Containment procedures.* The test facilities are in gated restricted areas. The water is in contained ponds or containers and will be treated with bleach for 24 hours following the experiments. Extensive experience with the Bti host cells and the mosquitocidal toxins has shown that they degrade rapidly in the environment.

C. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

The Agency has established an official record for this action under docket control number OPP-00719. 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. No information was 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, which includes printed, paper versions of any electronic comments submitted

during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

D. How and to Whom Do I Submit 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 OPP-00719 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-00719. Electronic comments may also be filed online at many Federal Depository Libraries.

E. 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 person identified under **FOR FURTHER INFORMATION CONTACT**.

F. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide 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. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control 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.

II. What Action is the Agency Taking?

The Agency will be reviewing this notification in accordance with 40 CFR part 172, subpart C to determine whether to approve or deny the field test, or to required the test to be conducted under an Experimental Use Permit.

List of Subjects

Environmental protection, Genetic engineering, Microbial pesticides, small-scale field testing, mosquito control, *Bacillus thuringiensis*.

Dated: May 25, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs

FR Doc. 01-13951 Filed 6-5-01; 8:45 a.m.]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00714; FRL-6780-1]

1, 4-Bis(bromoacetoxy)-2-butene Preliminary Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making reregistration eligibility decisions for the antimicrobial active ingredient 1, 4-Bis(bromoacetoxy)-2-butene (Bis-2) for use as an agent against slime-forming bacteria in: Oil wells and oil field enhanced recovery systems; in pulp and paper mill systems; and as an in-can preservative of water-based coatings. This notice also starts the 60-day public comment period for the Preliminary Risk Assessment for Bis-2. By allowing access and opportunity for comment on the Preliminary Risk Assessment, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under the Food Quality Protection Act (FQPA) are transparent and based on the best available information.

DATES: Comments, identified by docket control number OPP-00714, must be received on or before August 6, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00714 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Killian Swift, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-6346; e-mail address: swift.killian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to pulp and paper mill workers using papermaking machinery, oil field workers using secondary (enhanced) recovery systems, homeowners using water-based coatings, and paints manufactured by

Buckman Laboratories International, Inc. e.g., "those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA)." Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *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/>. To access this document, 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/>. "In addition, copies of the preliminary risk assessment for 1, 4-Bis(bromoacetoxy)-2-butene also may be accessed at <http://www.epa.gov/pesticides/reregistration/>."

2. *In person.* The Agency has established an official record for this action under docket control number OPP-00714. 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 Office of Pesticide Programs (OPP), Environmental Protection Agency, 1921 Jefferson Davis Highway, Crystal Mall #2, Room 119, Arlington, VA 22202. 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.

C. How and to Whom Do I Submit 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 OPP-00714 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Docket (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1921 Jefferson Davis Highway, Crystal Mall #2, Room 119, Arlington, VA 22202.

2. *In person or by courier.* Deliver your comments to: Public Docket (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1921 Jefferson Davis Highway, Crystal Mall #2, Room 119, Arlington, VA 22202. The Public Docket is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Docket is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or mail your computer disk to the address identified in this unit. 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 also will 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 OPP-00714. Electronic comments also may be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information 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 identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. 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 rule or 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 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.

II. What Action is the Agency Taking?

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for Bis-2.

The Agency is providing the opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemical specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with Bis-2. Failure to comment on any issues as part of this opportunity will in no

way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by 60 days from the date of the publication of this **Federal Register** notice.

List of Subjects

Environmental protection, Pesticides.

Dated: May 11, 2001.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

[FR Doc. 01-13949 Filed 6-5-01; 8:45 a.m.]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-64057; FRL-6784-4]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on December 6, 2001 unless indicated otherwise.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *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>. To access this document, 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** listing at <http://www.epa.gov/fedrgstr/>.

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 224, Arlington, VA, telephone number (703) 305-5761. Available from 7:30 a.m. to 4:45 p.m.,

Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in nine pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted.

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product	Chemical Name	Delete From Label
000228-00071	Riverdale 2,4-D LV 2 Ester	Acetic acid (2,4-dichlorophenoxy)-, 2-ethylhexyl ester	Drainage ditchbanks and aquatic uses
000228-00167	Riverdale Turf Weed & Brush Control	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester; Isooctyl 2-(2,4-dichlorophenoxy)propionate	Drainage ditchbanks
000829-00287	SA—50 Lawn, Ornamental & Vegetable Flowable Fungicide	Chlorothalonil	Lawn and turf uses
002217-00829	EH 1377 Herbicide	Dicamba; Acetic acid, 2,4-D; 2-Ethylhexyl(R)-2-(2,4-dichlorophenoxy) propionate	Non-agricultural waterways, drainageways & ditchbanks
005905-00498	Brush-Rhap Low Volative 4-D	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester	Aquatic non-food uses
062719-00009	Weed Killer 4D Herbicide	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester	Low bush blueberries
071368-00010	Weedone LV 4 IOE Broadleaf Herbicide	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester	Drainage ditchbanks and sugarcane
071368-00014	Weedone LV 4 Solventless Broadleaf Herbicide	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester	Drainage ditchbanks (aquatic non-food) and sugarcane
071368-00015	Weedone 2,4-D 2-EHE Gel Broadleaf Herbicide	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester	Drainage ditchbanks (aquatic non-food) and sugarcane

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before December 3, 2001 unless indicated otherwise, to discuss withdrawal of the application for amendment. This 180-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes, the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000228	Riverdale Chemical Co., 1333 Burr Ridge Parkway, Suite 125A, Burr Ridge, IL 60521.
000829	Southern Agricultural Insecticides, Inc., Box 218, Palmetto, FL 34220.
002217	PBI/Gordon Corp., Attn: Craig Martens, Box 014090, Kansas City, MO 64101.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd, 308/2E225, Indianapolis, IN 46268.
071368	Nufarm, Inc., 500 Lower Lake Rd., St. Joseph, MO 64504.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail:* Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked July 6, 2001

2. *In Person or by courier:* Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Room 266A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305-5263.

3. *Electronically.* You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: May 14, 2001.

Richard D. Schmitt,

Associate Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 01-13950 Filed 6-5-01; 8:45 a.m.]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[PF-1025; FRL-6785-1]

Notice of Filing Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF-1025, must be received on or before July 6, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-1025 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing 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 the table could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *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/>. To access this document, 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/>.

2. *In person.* The Agency has established an official record for this action under docket control number PF-1025. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit 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 PF-1013 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division

(7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF-1025. Electronic comments may also be filed online at many Federal Depository Libraries.

D. 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 person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide 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. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control 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.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 23, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

0E6173, 0E6217, 1E6230, 1E6236, 1E6245, 1E6255, 1E6256, and 1E6260

EPA has received pesticide petitions from the Interregional Research Project Number 4 (IR-4), P.O. Box 231, Rutgers University, New Brunswick, NJ 08903 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide, spinosad (spinosyn A and spinosyn D) in or on the following raw agricultural commodities (RACs):

1. 0E6173 proposes the establishment of tolerances for the pome fruit group at 0.2 parts per million (ppm), and foliage of legume vegetables at 8.0 ppm.

2. 0E6217 proposes the establishment of a tolerance for asparagus at 0.02.

3. 1E6230 proposes the establishment of tolerances for tree nut group, and pistachio at 0.02 ppm.

4. 1E6236 proposes the establishment of a tolerance for okra at 0.4 ppm.

5. 1E6245 proposes the establishment of tolerances for beet (garden) roots and beet (sugar) roots at 0.1 ppm, cranberry at 0.01 ppm, and the leaves of root and tuber vegetable group at 10 ppm.

6. 1E6255 proposes the establishment of tolerances for the bushberry group, junberry, lingonberry, and salal at 0.25 ppm.

7. 1E6256 proposes the establishment of a tolerance for globe artichoke at 0.3 ppm.

8. 1E6260 proposes the establishment of a tolerance for strawberry at 0.75 ppm.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of spinosad in plants and animals are adequately understood for the purposes of these tolerances.

2. *Analytical method.* There is a practical method (immun. assay) for detecting (0.005 ppm) and measuring (0.01 ppm) levels of spinosad in or on food with a limit of detection that allows monitoring of food with residues at or above the level set for these tolerances. The method has had a successful method tryout in EPA's laboratories.

3. *Magnitude of residues.* The magnitude of residues are adequately understood for the purposes of these tolerances.

B. Toxicological Profile

1. *Acute toxicity.* Spinosad has low acute toxicity. The rat oral lethal dose (LD)₅₀ is 3,738 milligrams/kilograms (mg/kg) (males) and > 5,000 mg/kg (females); mouse oral LD₅₀ is >5,000 mg/

kg; rabbit dermal LD₅₀ is >5,000 mg/kg; and rat inhalation lethal concentration (LC)₅₀ is >5.18 mg/L air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits.

2. *Genotoxicity.* Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, mammalian gene mutation assay using mouse lymphoma cells, DNA damage and repair in rat hepatocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with spinosad. These studies show a lack of genotoxicity.

3. *Reproductive and developmental toxicity.* Spinosad caused decreased body weights in maternal rats given 200 mg/kg/day by gavage highest dose tested (HDT). This was not accompanied by either embryo, fetal, or developmental toxicity. The no observed adverse effect level (NOAEL) for maternal and fetal toxicity in rats were 50 and 200 mg/kg/day, respectively. A developmental study in rabbits showed that spinosad caused decreased body weight gain and a few abortions in maternal rabbits given 50 mg/kg/day HDT. Maternal toxicity was not accompanied by either embryo, fetal, or developmental toxicity. The NOAEL for maternal and fetal toxicity in rabbits were 10 and 50 mg/kg/day, respectively. In a 2-generation reproduction study in rats, parental toxicity was observed in both males and females given 100 mg/kg/day HDT. Perinatal effects (decreased litter size and pup weight) at 100 mg/kg/day were attributed to maternal toxicity. The NOAEL for maternal and pup effects was 10 mg/kg/day.

4. *Subchronic toxicity.* Spinosad was evaluated in 13-week dietary studies and showed the following NOAELs: 4.89 and 5.38 mg/kg/day, respectively for male/female dogs; 6 and 8 mg/kg/day, respectively for male/female mice; and 33.9 and 38.8 mg/kg/day, respectively for male/female rats. No dermal irritation or systemic toxicity occurred in a 21-day repeated dose dermal toxicity study in rabbits given 1,000 mg/kg/day.

5. *Chronic toxicity.* Based on chronic testing with spinosad in the dog and the rat, EPA has set a reference dose (RfD) of 0.027 mg/kg/day for spinosad. The RfD has incorporated a 100-fold safety factor to the NOAELs found in the chronic dog study to account for interspecies and intraspecies variation. The NOAELs shown in the dog chronic study were 2.68 and 2.72 mg/kg/day, respectively for male and female dogs.

The NOAELs (systemic) shown in the rat chronic/carcinogenicity/neurotoxicity study were 9.5 and 12.0 mg/kg/day, respectively for male and female rats. There was no evidence of carcinogenicity in an 18-month mouse feeding study and a 24-month rat feeding study at all dosages tested. The NOAELs shown in the mouse carcinogenicity study were 11.4 and 13.8 mg/kg/day, respectively for male and female mice. A maximum tolerated dose was achieved at the HDT in both of these studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, a cancer risk assessment is not needed.

6. *Animal metabolism.* There were no major differences in the bioavailability routes, rates of excretion, or metabolism of spinosyn A and spinosyn D following oral administration in rats. Urine and fecal excretions were almost completed in 48-hours post-dosing. In addition, the routes and rates of excretion were not affected by repeated administration.

7. *Metabolite toxicology.* The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, metabolite toxicity is not applicable.

8. *Endocrine disruption.* There is no evidence to suggest that spinosad has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.*

Previously for the purposes of assessing potential dietary exposure from use of spinosad on RACs proposed within this petition as well as from other existing spinosad crop uses, a Tier I assessment was conducted using 100% crop treated and use of tolerance values within the residue file. However, with the proposal of several new uses including proposals from IR-4, a refined and more realistic assessment is needed. Information on average residues, market share and when available processing factors (specific to spinosad and commodities) has been used to estimate dietary burden of individual commodities. The theoretical maximum residue contribution (TMRC) is obtained by multiplying estimated residue levels by the consumption data which estimates the amount of crops and related food consumed by various population subgroups. The use of average residues and market share results in a refinement of the human exposure and a safety determination for the use of spinosad on crops cited in this summary that is based on a conservative exposure assessment.

ii. *Drinking water.* Based on the available environmental studies

conducted with spinosad, its properties show little or no mobility in soil. Therefore, no anticipated exposure to residues of spinosad in drinking water is expected. In addition, no Maximum Concentration Level (MCL) has been established.

2. *Non-dietary exposure.* Spinosad is currently registered for outdoor use on turf and ornamentals at low rates of application (0.04 to 0.54 lb active ingredient per acre) and indoor use for drywood termite control (extremely low application rates used with no occupant exposure expected). Localized baits for fire ants again at low rates are also available. Thus, the potential for non-dietary exposure to the general population is considered negligible.

D. Cumulative Effects

There is no reliable information to indicate that toxic effects produced by spinosad would be cumulative with those of any other pesticide chemical. Thus, it is appropriate to consider only the potential risks of spinosad in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the refined exposure assumptions and the RfD, the aggregate exposure to spinosad use on existing crop uses utilizes 5.5% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The new crop uses proposed have been included in this refined dietary assessment. Thus, it is clear that there is reasonable certainty that no harm will result from aggregate exposure to spinosad residues on existing and all pending crop uses listed in this notice.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of spinosad, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of

threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for spinosad relative to prenatal and postnatal effects for children is complete. Further, for spinosad, the NOAELs in the dog chronic feeding study which was used to calculate the RfD (0.027 mg/kg/day) are considerably lower than the NOAELs from the developmental studies in rats and rabbits by a factor of more than 10-fold.

Concerning the reproduction study in rats, the pup effects shown at the HDT were attributed to maternal toxicity. Therefore, it is concluded that an additional uncertainty factor is not needed and that the RfD at 0.027 mg/kg/day is appropriate for assessing risk to infants and children.

In addition, the EPA has determined that the 10X factor to account for enhanced sensitivity of infants and children is not needed because: (1) The data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to spinosad; (2) no neurotoxic signs have been observed in any of the standard required studies conducted; (3) the toxicology data base is complete and there are no data gaps; and (4) exposure data are complete or are estimated based on data that reasonably account for potential exposure.

Using the exposure assumptions, the percent dietary RfD utilized by the aggregate exposure to residues of spinosad on existing crop utilizes 15% of the chronic population adjusted dose (cPAD) for children 1 to 6 years old, the most sensitive population subgroup. The new crop uses have been included in this assessment. Thus, based on the completeness and reliability of the toxicity data and the exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues on the proposed uses including existing crop uses.

F. International Tolerances

There is no Codex maximum residue levels established for residues of spinosad at this time.

[FR Doc. 01-14253 Filed 06-05-01; 8:45 am]

BILLING CODE 6560-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50879A; FRL-6784-2]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Hwy., Rm. 9010, Crystal Mall #2, Arlington, VA; (703) 605-0515; e-mail address: reynolds.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *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/>. To access this document, 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/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-50879A. The official record consists of the documents specifically

referenced in this action, 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. EUP

EPA has issued the following EUP:

524-EUP-91. Extension. Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198. This EUP allows the use of 181.5 grams of the plant pesticide *Bacillus thuringiensis* Cry1Ac protein and the genetic material necessary for its production (vector PV-GMBT02) in soybean on 199.7 acres of soybean to evaluate the control of soybean looper, stem borer, and velvetbean caterpillar. The program is authorized only in the States of Alabama, Arkansas, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Pennsylvania, Puerto Rico, and Tennessee. The EUP is effective from May 1, 2001 to April 30, 2002. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only.

Persons wishing to review this EUP are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection,
Experimental use permits.

Dated: May 23, 2001.

Kathleen F. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01-13952 Filed 6-5-01; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-01-40-E (Auction No. 40); DA 01-1307]

Auction of Licenses for Lower and Upper Paging Bands Postponed Until October 30, 2001

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document postpones until October 30, 2001 the start of the upcoming auction of licenses in the Lower and Upper Paging Bands (Auction No. 40) originally scheduled to begin on June 26, 2001. The delay is necessary to allow additional testing on newly developed Web-based software.

DATES: Auction No. 40 is rescheduled to begin on October 30, 2001.

FOR FURTHER INFORMATION CONTACT:

Kathy Garland, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (717) 338-2888; or Erik Salovaara, Legal Branch, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released May 25, 2001 (Auction No. 40 Postponement Public Notice). The complete text of the Auction No. 40 Postponement Public Notice 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 Auction No. 40 Postponement Public Notice 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 Auction No. 40 Postponement Public Notice is also available on the Internet at the Commission's web site: <http://www.fcc.gov/wtb/documents.html>.

1. By the Auction No. 40 Postponement Public Notice, the Wireless Telecommunications Bureau announces that the start of the upcoming auction of lower and upper paging bands, scheduled for June 26, 2001, is postponed until October 30,

2001, due to the need for additional testing on newly developed Web-based software. The information provided in previous public notices regarding the auction remains unchanged, with the exception of scheduled dates and deadlines in the Procedures Public Notice, 66 FR 21143 (April 27, 2001). Rescheduled dates and deadlines are: Short-Form Application (FCC Form 175) Deadline: September 17, 2001 Upfront Payments Deadline: October 5, 2001 Auction Start Date: October 30, 2001

Additional rescheduled dates and deadlines will be announced in a subsequent public notice.

2. The original short-form application (FCC Form 175) filing window for Auction No. 40 closed on May 14, 2001, at 6 p.m. ET. All applications submitted during the original window will be deemed ineffective and purged from the FCC's computer system. Any party will be permitted to submit an application for Auction No. 40 in accordance with the new deadline stated.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 01-14243 Filed 6-5-01; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented

on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829), *OMB Desk Officer*—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Notice of Proposed Stock Redemption.
Agency form number: FR 4008.
OMB control number: 7100-0131.
Frequency: On occasion.
Reporters: Bank holding companies.
Annual reporting hours: 310 hours.
Estimated average hours per response: 15.5 hours.
Number of respondents: 20.
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(c)) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a bank holding company (BHC), other than a well-run company, to give written notice to its District Federal Reserve Bank before purchasing or redeeming its equity securities if the consideration paid for the proposed redemption and other redemptions over the preceding twelve months is 10 percent or more of the company's consolidated net worth. There is no reporting form; the BHC notifies the Federal Reserve by letter prior to making the proposed redemption. The Federal Reserve uses the information to fulfill its statutory obligation to supervise bank holding companies.

2. *Report title:* Notice Claiming Status as an Exempt Transfer Agent.
Agency form number: FR 4013.
OMB control number: 7100-0137.
Frequency: On occasion.
Reporters: Banks, bank holding companies, and trust companies.
Annual reporting hours: 12 hours.
Estimated average hours per response: 2 hours.

Number of respondents: 6.
Small businesses are affected.
General description of report: This information collection is voluntary (15 U.S.C. 78q-1(c)(1)) and is not given confidential treatment.

Abstract: Banks, bank holding companies, and trust companies subject to the Federal Reserve's supervision that are low-volume transfer agents voluntarily file the FR 4013 notice on occasion with Federal Reserve Board. Transfer agents are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers. The purpose of the notice, which is effective until the agent withdraws it, is to claim exemption from certain rules and regulations of the Securities and Exchange Commission (SEC). The Federal Reserve uses the notices for supervisory purposes because the SEC has assigned to the Federal Reserve responsibility for collecting the notices and verifying their accuracy through examinations of the respondents. The notice is made by letter; there is no reporting form.

3. *Report title:* Survey to Obtain Information on the Relevant Market in Individual Merger Cases.

Agency form number: FR 2060.

OMB control number: 7100-0232.

Frequency: On occasion.

Reporters: Small businesses and consumers.

Annual reporting hours: 37 hours.

Estimated average hours per response: 10 minutes for small businesses, 6 minutes for consumers.

Number of respondents: 25 small businesses and 50 consumers per survey.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 1817(j), 1828 (c), and 1841 *et seq.*) and is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(6)).

Abstract: The Federal Reserve uses this telephone survey to determine the sources from which small businesses and consumers in a particular geographical area obtain financial services. The information is needed for specific merger and acquisition applications to determine relevant banking markets in the analysis of local market competition.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Reports

1. *Report title:* Weekly Report of Assets and Liabilities for Large Banks.

Agency form number: FR 2416.

OMB control number: 7100-0075.

Frequency: Weekly.

Reporters: U.S.-chartered commercial banks.

Annual reporting hours: 18,850 hours.

Estimated average hours per response: 7.25 hours.

Number of respondents: 50.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225(a) and 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

2. *Report title:* Weekly Report of Selected Assets.

Agency form number: FR 2644.

OMB control number: 7100-0075.

Frequency: Weekly.

Reporters: U.S.-chartered commercial banks.

Annual reporting hours: 66,924 hours.

Estimated average hours per response: 1.17 hours.

Number of respondents: 1,100.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 225(a) and 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

3. *Report title:* Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2069.

OMB control number: 7100-0030.

Frequency: Weekly.

Reporters: U.S. branches and agencies of foreign (non-U.S.) banks.

Annual reporting hours: 27,891 hours.

Estimated average hours per response: 5.83 hours.

Number of respondents: 92.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248 (a)(2) and 3105(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2416 is a detailed, 46-item balance sheet that covers domestic offices of large U.S.-chartered commercial banks. The FR 2644 collects 17 items covering investments and loans plus total assets and three memorandum items, two that disaggregate total borrowings between bank and nonbank sources and one for mortgage-backed securities. The FR 2069 is a detailed, 28-item balance sheet that covers large U.S. branches and agencies of foreign banks. These reports are collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR 2416 is used on a stand-alone basis as the "large domestic bank series." The other two reports are samples for estimating outstandings for the universe, using data for benchmarks from the quarterly commercial bank Consolidated Reports

of Condition and Income (FFIEC 031/041; OMB No. 7100-0036) and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100-0032) (Call Reports). Data from all three reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole. These estimates are used in constructing the bank credit component of the domestic nonfinancial debt aggregate.

The Federal Reserve publishes the data in aggregate form in a statistical release that is followed closely by other government agencies, the banking industry, the financial press, and other users. This weekly H.8 statistical release, "Assets and Liabilities of Commercial Banks in the United States," provides a balance sheet for the banking industry as a whole and disaggregated by its large domestic, small domestic, and foreign related components.

Current Actions: The Federal Reserve has approved the proposed changes to these three reports to conform with the March 31, 2001, and June 30, 2001, changes to the Call Reports. In addition to these revisions, on the FR 2416, the Federal Reserve approved a minor redefinition of "Commercial real estate loans" to include loans secured by farmland. The Federal Reserve determined that real estate loans secured by farmland, currently reported in "All other loans secured by real estate," are used primarily for the financing of land for production (a commercial purpose), rather than for financing the improvements on the land, such as farmhouses. Thus, the bulk of farm real estate loans have a commercial, rather than a residential, character.

These proposed changes to the FR 2416, FR 2644, and FR 2069 will be effective with the reports for July 4, 2001.

Board of Governors of the Federal Reserve System, May 31, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01-14138 Filed 6-5-01; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and

§ 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 21, 2001.

A. Federal Reserve Bank of Atlanta
(Cynthia C. Goodwin, Vice President)
104 Marietta Street, N.W., Atlanta,
Georgia 30303-2713:

1. *Albert McCall Salem, Jr., Mantabs, L.L.C., and Mantabs FCB Trust*, all of Tampa, Florida; to acquire additional voting shares of FCB Financial, Inc., Tampa, Florida, and thereby indirectly acquire additional voting shares of First Commercial Bank of Tampa, Tampa, Florida.

Board of Governors of the Federal Reserve System, June 1, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01-14271 Filed 6-5-01; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 2001.

A. Federal Reserve Bank of Atlanta
(Cynthia C. Goodwin, Vice President)
104 Marietta Street, N.W., Atlanta,
Georgia 30303-2713:

1. *ABC Bancorp, Inc., Moultrie, Georgia*; to merge with Golden Isles Financial Holdings, Inc., St. Simons Island, Georgia, and thereby indirectly acquire voting shares of First Bank of Brunswick, Brunswick, Georgia.

Board of Governors of the Federal Reserve System, May 31, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01-14139 Filed 6-5-01; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Child Care and Development Fund Annual Report (Form ACF-700).

OMB No.: 0980-0241.

Description: The Child Care and Development Fund (CCDF) report requests annual tribal aggregate information on services provided through the CCDF which is required by the Child Care and Development Block Grant (CCDBG) Final Rule (45 CFR Parts 98 and 99). Tribes are required to submit annual aggregate data appropriate to tribal programs on children and families receiving CCDF-funds or CCDBG funded child care services. The CCDBG statute and regulations also require Tribal Lead Agencies to submit a supplemental narrative as part of the ACF-700 report. This narrative describes general child care activities and actions in the Tribal Lead Agency's service area and is not restricted to CCDF-funded child care activities. Instead this description is intended to address all child care available in the Tribal Lead Agency's service area. The ACF-700 and supplemental narrative report will be included in the Secretary's report to Congress, as appropriate, and will be shared with all Tribal Lead Agencies to inform them of CCDF or CCDBG-funded activities in other tribal programs.

Respondents: Tribal CCDF Programs (257 in total).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Annual Report	257	1	35	8,995
Estimated Total Annual Burden Hours				8,995

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of

information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests

should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 31, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01-14179 Filed 6-5-01; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Carryover and Reallotment Report.

OMB No.: 0970-0106.

Description: The LIHEAP statute and regulations require LIHEAP grantees to report certain information to HHS concerning funds forwarded and funds subject to reallotment. The 1994 reauthorization of the LIHEAP statute, the Human Service Amendments of 1994 (Pub. L. 103-252), requires that the carryover and reallotment report for one fiscal year be submitted to HHS by the

grantee before the Allotment for the next fiscal year may be awarded.

We are requesting changes in the collection of data by adding a form, the Carryover and Reallotment Report For FY 20____, for the collection of data previously requested by the Simplified Instructions for Timely Obligations of FY 20____ LIHEAP Funds and Reporting Funds for Carryover and Reallotment. The addition of the form will clarify the information being requested and ensure the submission of all the required information. Use of the form will be voluntary. It is being added in response to numerous queries each year concerning how to provide information. It will not add any additional burden on grantees. Grantees would have the option to use another format.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Carryover and Reallotment	177	1	3	531
Estimated Total Annual Burden Hours:				531

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Dated: May 31, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01-14180 Filed 6-5-01; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 14, 2001, 8:30 a.m. to 5:30 p.m. and June 15, 2001, 8:30 a.m. to 3:45 p.m.

Location: Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM-302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-3514, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 14, 2001, the following committee updates are tentatively scheduled: (1) Summary of the Public Health Service Advisory Committee on Blood Safety and Availability meeting, and (2) current thinking on clinical trial design and performance standards for approval of rapid human immunodeficiency virus (HIV) tests. In the morning, the committee will hear presentations, and discuss and make recommendations on re-entry for donors deferred because of HIV or hepatitis C virus (HCV) nucleic acid testing (NAT) or serological test results. In the afternoon, the committee will hear presentations, and discuss and make recommendations on the Clinical Laboratory Improvement Act (CLIA) criteria for invitro diagnostic tests: (1) Applicability of waivers to HIV rapid tests, and (2) revision of the uniform

donor history questionnaire. On June 15, 2001, the following updates are tentatively scheduled: Summaries of the Office of Blood Research and Review, Center for Biologics Evaluation and Research (CBER), transmissible spongiform encephalopathy (TSE) and bovine spongiform encephalopathy (BSE) action plans. In the morning, the committee will hear an informational presentation, and discuss and make recommendations on transfusion-related acute lung injury. In the afternoon, the committee will hear presentations on studies on leukoreduction filtration failures.

Procedure: On June 14, 2001, from 8:30 a.m. to 5:30 p.m. and on June 15, 2001, from 8:30 a.m. to 3:45 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 8, 2001. Oral presentations from the public will be scheduled between approximately 10:15 a.m. and 10:45 a.m., 2:30 p.m. and 3 p.m., and 4:45 p.m. and 5 p.m. on June 14, 2001; and between approximately 10:15 a.m. and 10:45 a.m., and 1:45 p.m. and 2:15 p.m. on June 15, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 8, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 15, 2001, from 3:15 p.m. to 3:45 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of the review of individual research programs in the Division of Hematology, Office of Blood Research and Review, CBER.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 25, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01-14286 Filed 6-1-01; 4:12 pm]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Epidemiologic Studies of the Mayak and Techa River Cohorts.

Date: June 6, 2001.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892-7405, (301) 496-7575.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 24, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14161 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Training Grants.

Date: June 27, 2001.

Time: 6:00 PM to 7:30 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Olivia Preble Bartlett, PhD, Chief, Grants Review Branch, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8121, Rockville, MD 20892-7405, 301/594-2501.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14162 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Ultrasound Research Interface.

Date: June 18, 2001.

Time: 8:00 AM to 4:00 PM

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Conference Room E & D, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8043, Bethesda, MD 20892, (301) 496-7576.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 30, 2001.

LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14163 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel General Clinical Research Centers.

Date: June 15, 2001.

Time: 8:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John L. Meyer, PhD, Deputy Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892-7965, 301-435-0806, meyerj@ncrr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: May 25, 2001.

LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14159 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: June 8, 2001.

Time: 11:00 AM to 1:45 PM.

Agenda: To review and evaluate contract proposals.

Place: Natcher Building, Room 5As.25, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Bldg. 45/Room 5as-25h, Bethesda, MD 20892, (301) 594-4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 25, 2001.

LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14158 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 11, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD., RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892-9608, 301-443-1606.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 24, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14160 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Medicinal Chemistry-Synthesis of Potential Treatment Agents for Cocaine Addiction".

Date: June 13, 2001.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892-9547, (301) 435-1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14164 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Research Program Project.

Date: July 12, 2001.

Time: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1250 S. Hayes Street, Arlington, VA 22202.

Contact Person: Khurshed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892-9547, (301) 443-2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Health Disparities: Drug Use and its Adverse Behavioral, Social, Medical, and Mental Health Consequences.

Date: July 19-20, 2001.

Time: 9:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892-9547, (301) 435-1433.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, The Transition from Drug Use to Addiction: Unearthing the Switch.

Date: July 24-25, 2001.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Suite 3158, 6001 Executive Boulevard, Bethesda, MD 20892-9547, (301) 435-1431.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14165 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee.

Date: July 19–20, 2001.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Building 101 Conference Room, South Campus, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-24, Research Triangle Park, NC 27709, (919) 541-1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: May 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14166 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Initiative for Minority Student Development

Date: July 9–11, 2001.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Sesma, PhD., Office of Scientific Review, NIGMS, Natcher Bldg., Room 1AS19H, 45 Center Drive, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14167 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 12, 2001.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435-1776 davidson@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15, 2001.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, Washington, DC 20036.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435-1178, fujii@drg.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17, 2001.

Time: 7:30 PM to 9:30 PM.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Resorts and Hotels, 1550 Court Place, Denver, CO 80202.

Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435-1043 amirs@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17, 2001.

Time: 7:30 PM to 10:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435-1042, shaikha@csr.nih.gov

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group Surgery and Bioengineering Study Section.

Date: June 18–19, 2001.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435-1172, nesbitt@csr.nih.gov

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: June 18–19, 2001.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., NW., Washington, DC 20007.

Contact Person: Gerald L. Becker, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435-1170.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Human Embryology and Development Subcommittee 1.

Date: June 18–19, 2001.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18–19, 2001.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hay Adams, One Lafayette Square, 16th and H Street, NW., Washington, DC 20006.

Contact Person: Gillian Einstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, 301–435–4433, einstein@csr.nih.gov

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Endocrinology Study Section.

Date: June 18–19, 2001.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Resorts and Hotels, 1550 Court Place, Denver, CO 80202.

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, amirs@csr.nih.gov

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group Metabolism Study Section.

Date: June 18–19, 2001.

Time: 8:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Pathophysiological Sciences Integrated Review Group Alcohol and Toxicology Subcommittee 1.

Date: June 18–19, 2001.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.

Contact Person: Rass M. Shaiyq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–2359.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 2001.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Resorts and Hotels, 1550 Court Place, Denver, CO 80202.

Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 2001.

Time: 8:00 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: Pathophysiological Sciences Integrated Review Group Respiratory and Applied Physiology Study Section.

Date: June 18–19, 2001.

Time: 8:30 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Everett E. Sinnott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnott@nih.gov

Name of Committee: Oncological Sciences Integrated Review Group Radiation Study Section.

Date: June 18–20, 2001.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group Nutrition Study Section.

Date: June 18–19, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Resorts and Hotels, 1550 Court Place, Denver, CO 80202.

Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036–3305.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 2001.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 2001.

Time: 5 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Resorts and Hotels, 1550 Court Place, Denver, CO 80202.

Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Integrative, Functional and Cognitive Neuroscience 4.

Date: June 19–20, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P. St., NW., Washington, DC 20037.

Contact Person: Dan Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 19, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245, richard.marcus@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 19, 2001.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin Slater, PHD,
Scientific Review Administrator, Center for
Scientific Review, National Institutes of
Health, 6701 Rockledge Drive, Room 4184,
MSC 7808, Bethesda, MD 20892, (301) 435-
1149, slaterm@csr.nih.gov

(Catalogue of Federal Domestic Assistance
Program Nos. 93.306, Comparative Medicine,
93.306; 93.333, Clinical Research, 93.333,
93.337, 93.393-93.396, 93.837-93.844,
93.846-93.878, 93.892, 93.893. National
Institutes of Health, HHS)

Dated: May 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory
Committee Policy.

[FR Doc. 01-14157 Filed 6-5-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Applicant: AZA Rhinoceros Advisory Group on behalf of Sedgwick County Zoo, Wichita, KS, PRT-042888.

The applicant requests a permit to import one female black rhinoceros (*Dicornis bicornis*) from the Yokohama Kanazawa Zoo, Japan, for the purpose of enhancement of propagation of the species through captive breeding.

Applicant: National Aviary in Pittsburgh, Pittsburgh, PA, PRT-040800.

The applicant requests a permit to export viable eggs of captive bred Manchurian crane (*Grus japonensis*) and white-naped crane (*Grus vipio*) for the purpose of enhancement of the survival of the species through captive breeding and re-introduction. This notification covers activities conducted by the applicant over the next 5 years.

Applicant: Gary Duane Gust, Cedar Springs, MI, PRT-043084.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management

program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James J. Moore, Ph.D., University of San Diego, PRT-039828.

The applicant request a permit to import biological samples of chimpanzee (*Pan troglodytes*) collected from the wild in Tanzania, for scientific research. This notification covers activities conducted by the applicant for a period of five years.

Applicant: Washington Regional Primate Research Center, Seattle, WA, PRT-029665.

The applicant requests a permit to import biological samples from orangutan (*Pongo pygmaeus*), siamang (*Symphalangus syndactylus*), and gibbons (*Hylobates* spp.) collected from captive-held and captive-born specimens in Indonesia, for scientific research. This notification covers activities conducted by the applicant over a five year period.

Applicant: Howard H. McCutchen, Hanlan, IA, PRT-043170.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Department of Geology & Geophysics, University of Utah, UT, PRT-043260.

The applicant requests a permit to import biological samples collected from wild yellow-footed rock wallabies (*Petrogale xanthopus*) in Australia for scientific research.

Applicant: Dr. Jennifer Pastorini, Dept. of Biology, Southwest Texas State University, TX, PRT-043202.

The applicant requests a permit to import biological samples from a collection currently held at the University of Zurich, Switzerland, for scientific research. The samples were collected from both wild and captive non-human primates and represent multiple species in the families Lepilemuridae, Daubentonidae, Indridae, Cheirogaleidae, and Lemuridae.

Applicant: McCarthy Wildlife Sanctuary, FL, PRT-037668.

The applicant requests a permit to import one captive-born male cheetah (*Acinonyx jubatus*) from DeWildt Cheetah Research and Breeding Centre, South Africa, for the purpose of the enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Charles F. Mervar, Longmont, CO, PRT-043244.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population in Canada for personal use taken April, 2001.

Applicant: Vaughn Liljenquist, Glendale, AZ, PRT-043194.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population in Canada for personal use taken April, 2001.

Applicant: Sead Dizdarevic, Far Hills, NJ, PRT-043241.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Norwegian Bay polar bear population in Canada for personal use taken May, 2001.

Applicant: Jay E. Link, Minong, WI, PRT-042006.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population in Canada for personal use taken April, 2001.

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358-2104 or fax 703/358-2281. These requests must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018-0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the

requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2104); Fax: (703/358-2281).

Dated: May 25, 2001.

Monica Farris,

Senior Biologist, Branch of Permits, Office of Management Authority.

[FR Doc. 01-14188 Filed 6-5-01; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Southwestern Willow Flycatcher Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Document Availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the southwestern willow flycatcher (*Empidonax traillii extimus*). The breeding range of this bird includes southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and possibly extreme northern portions of the Mexican states of Baja, California del Norte, Sonora, and Chihuahua. Within this region, the species breeds in dense riparian tree and shrub communities associated with rivers, swamps, and other wetlands including lakes (e.g., reservoirs). Most of these habitats are classified as forested wetlands or scrub-shrub wetlands. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft Recovery Plan must be received on or before October 4, 2001 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy by contacting Greg Beatty, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021-4951 (602/242-0210). Written comments and materials regarding the plan should be addressed to the Field Supervisor at this same address. Comments and materials

received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Greg Beatty (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Draft Southwestern Willow Flycatcher Recovery Plan describes the status, current management, recovery objectives and criteria, and specific actions needed to reclassify the southwestern willow flycatcher from endangered to threatened, and to ultimately delist it. The draft Plan was developed by: Deborah M. Finch, U.S. Forest Service, Rocky Mountain Research Station, Albuquerque, New Mexico (Team Leader); Stephen I. Rothstein, University of California, Santa Barbara, California (Vice Team Leader); Jon C. Boren, New Mexico State University, Las Cruces, New Mexico; Jerry L. Holechek, New Mexico State University, Las Cruces, New Mexico; Barbara E. Kus, U.S. Geological Survey (USGS) Western Ecological Research Center, San Diego State University, San Diego, California; Robert M. Marshall, The Nature Conservancy, Tucson, Arizona; Susan J. Sferra, U.S. Bureau of Reclamation, Phoenix, Arizona; Mark K.

Sogge, USGS Forest and Rangeland Ecosystem Science Center, Colorado Plateau Field Station, Flagstaff, Arizona; Julie C. Stromberg, Arizona State University, Tempe, Arizona; Bradley A. Valentine, California Department of Fish and Game, Santa Rosa, California; Mary J. Whitfield, Southern Sierra Research Center, Weldon, California; Sartor O. Williams III, New Mexico Department of Game and Fish, Santa Fe, New Mexico; and geographically-based teams of stakeholders (Implementation Subgroups), which include representatives of Native American Tribes, State and local governments, ranchers, private land owners and managers, agency representatives, and others.

The southwestern willow flycatcher is known to currently breed in dense riparian vegetation in southern California, southern Nevada, southern Utah, Arizona, New Mexico, and southwestern Colorado. Although extreme northwestern Mexico and western Texas are considered part of its breeding range, no nesting birds are presently known to occur in these areas. The dense riparian vegetation that is needed for breeding was historically rare and sparsely distributed, and is now more rare. Destruction and modification of riparian habitats have been caused mainly by: reduction or elimination of surface and subsurface water due to diversion and groundwater pumping; changes in flood and fire regimes due to dams and stream channelization; clearing and controlling vegetation, livestock grazing; changes in water and soil chemistry due to disruption of natural hydrologic cycles; and establishment of non-native plants. Concurrent with habitat loss have been increases in brood parasitism by the brown-headed cowbird (*Molothrus ater*) and the presence of nest predation which inhibits reproductive success and further reduces population levels. Actions needed to recover the southwestern willow flycatcher are those that would increase and improve breeding habitat by restoring and/or re-creating natural physical and biotic processes that influence riparian ecosystems, and reducing other stresses on the flycatcher. Specific actions include: changing management of surface and groundwater, including fundamental changes in dam operations, and restoring flood cycles; reducing impacts of domestic livestock, wild burros, and native ungulates; improving metapopulation stability; securing long-term protection of breeding habitat; managing exotic plant species; reducing brood parasitism by brown-headed

cowbirds; conducting research to refine management practices and knowledge of ecology. The draft Plan will be revised and finalized based on comments received during meetings with the Implementation Subgroups, as well as comments received from the public.

Public Comments Solicited

The Service solicits written comments on the Draft Southwestern Willow Flycatcher Recovery Plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 17, 2001.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 01-14183 Filed 6-5-01; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish And Wildlife Service

Environmental Statements; Availability, Etc: Incidental Take Permits—Houston Toad; Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (*Bufo houstonensis*) During Construction of One Single-family Residence on Approximately 0.5 Acres of the 15.704-acre Property on Gotier Trace Road, Bastrop County, Texas (Adams)

Summary: Leslie Adams (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE-041787-0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single-family residence on approximately 0.5 acres of the 15.704-acre property on Gotier Trace Road, Bastrop County, Texas. The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the

date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dates: Written comments on the application should be received on or before July 6, 2001.

Addresses: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico, 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas, 78758 (512/490-0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE-041787-0 when submitting comments.

For Further Information Contact: Clayton Napier at the above U.S. Fish and Wildlife Service, Austin Office.

Supplementary Information: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Leslie Adams plans to construct a single-family residence on approximately 0.5 acres of the 15.704-acre property on Gotier Trace Road, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the property. The Applicant proposes to compensate for this incidental take of the Houston toad by providing \$2,000.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 01-14184 Filed 6-5-01; 8:45 am]

BILLING CODE 4510-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (*Bufo houstonensis*) During Construction of One Single-family Residence on Approximately 0.5 Acres of the 19.023-acre Property on Turkey Run Road, Bastrop County, Texas (Holcomb)

Summary: Will Holcomb (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE-041785-0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single-family residence on approximately 0.5 acres of the 19.023-acre property on Turkey Run Road, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dates: Written comments on the application should be received by July 6, 2001.

Addresses: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico, 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas, 78758 (512/490-0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number

TE-041785-0 when submitting comments.

FOR FURTHER INFORMATION CONTACT:

Clayton Napier at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Will Holcomb plans to construct a single-family residence on approximately 0.5 acres of the 19.023-acre property on Turkey Run Road, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the property. The Applicant proposes to compensate for this incidental take of the Houston toad by providing \$1,000.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

*Acting Regional Director, Region 2,
Albuquerque, New Mexico.*

[FR Doc. 01-14185 Filed 6-5-01; 8:45 am]

BILLING CODE 4510-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (*Bufo houstonensis*)

During Construction of One Single-family Residence on Approximately 0.5 Acres of the 3.015-acre Property on Cowboy Loop, Bastrop County, Texas (Nicholson).

Summary: Don and Kate Nicholson (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE-041784-0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single-family residence on approximately 0.5 acres of the 3.015-

acre property on Cowboy Loop, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dates: Written comments on the application should be received on or before July 6, 2001.

Addresses: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico, 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas, 78758 (512/490-0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE-041784-0 when submitting comments.

For Further Information Contact: Clayton Napier at the above U.S. Fish and Wildlife Service, Austin Office.

Supplementary Information: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Don and Kate Nicholson plan to construct a single-family residence on approximately 0.5 acres of the 3.015-acre property on Cowboy Loop, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the property. The Applicants propose to compensate for this incidental take of the Houston toad by providing \$2,000.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within

Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

*Acting Regional Director, Region 2,
Albuquerque, New Mexico.*

[FR Doc. 01-14186 Filed 6-5-01; 8:45 am]

BILLING CODE 4510-55-U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On April 3, 2001, a notice was published in the **Federal Register**, Vol. 66, No. 64, Page 17728, that an application had been filed with the Fish and Wildlife Service by Stanley Arnt, Watervliet, MI, for a permit (PRT-040317) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on May 17, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 13, 2001, a notice was published in the **Federal Register**, Vol. 66, No. 49, Page 14593, that an application had been filed with the Fish and Wildlife Service by Robert Seidelman, Montgomery, IL, for a permit (PRT-038861) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on May 17, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone (703) 358-2104 or Fax (703) 358-2281.

Dated: May 25, 2001.

Monica Farris,

Senior Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01-14187 Filed 6-5-01; 8:45 am]

BILLING CODE 4310-55-U

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Ballast Water and Shipping Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The Ballast Water and Shipping Committee will meet from 9:00 a.m. to 3:00 p.m., Monday, June 11, 2001.

ADDRESSES: The Ballast Water and Shipping Committee meeting will be held at the U.S. Coast Guard Headquarters, Room 2415, 2100 Second Street, SW, Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: LCDR Mary Pat McKeown, U.S. Coast Guard, Ballast Water and Shipping Committee Chairperson, at 202-267-0500 or by e-mail at mmckeown@comdt.uscg.mil; or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703-358-2308 or by e-mail at sharon_gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701-4741). The Ballast Water and Shipping Committee will discuss the prioritization of research needs for ballast water management and the document "Ballast Water Treatment Residuals, Environmental Laws and How They May Relate" submitted by the Environmental Soundness Working Group.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203-1622, and the Chairperson of the Ballast Water and Shipping Committee at the Environmental Standards Division, Office of Operations and Environmental Standards, U.S. Coast Guard (G-MSO-4), 2100 Second Street, SW, Room 1309, Washington, DC 20593-0001. Minutes for the meeting will be available at these locations for public inspection during

regular business hours, Monday through Friday.

Dated: May 25, 2001.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 01-14148 Filed 6-5-01; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR**Minerals Management Service****Agency Information Collection Activities: Proposed Collection, Comment Request**

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved collection (OMB Control Number 1010-0104).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "Certification for Not Performing Accounting for Comparison (Dual Accounting)."

DATES: Submit written comments on or before August 6, 2001.

ADDRESSES: Submit written comments to Paul Knueven, Regulations and FOIA Team, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A-613, Denver Federal Center, Denver, Colorado 80225.

PUBLIC COMMENT PROCEDURE: Submit your comments to the addresses listed in the **ADDRESSES** section, or email your comments to us at mrm.comments@mms.gov. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Mr. Knueven at (303) 231-3316. We will post all comments at http://www.mrm.mms.gov/Laws_R_D/FRNptoce/FRInfColl.htm for public review.

We make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our

offices in Lakewood, Colorado.

Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Paul Knueven, Regulations and FOIA Team, phone (303) 231-3316, FAX (303) 231-3385, email Paul.Knueven@mms.gov. A copy of the ICR will be available to you without charge upon request. The ICR will also be posted to our web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm when we submit the ICR to OMB for review and approval.

SUPPLEMENTARY INFORMATION:

Title: Certification for Not Performing Accounting for Comparison (Dual Accounting).

OMB Control Number: 1010-0104.

Bureau Form Number: Form MMS-4410.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. We perform the royalty management functions and assist the Secretary in carrying out DOI's Indian trust responsibility.

Accounting for comparison (dual accounting) is required by the terms of most Indian leases. To not perform dual accounting, a lessee must certify on Form MMS-4410, Certification For Not Performing Accounting For Comparison, that the gas was never processed prior to entering the pipeline with an index located in an index zone or into a mainline pipeline not in an index zone. This is a one-time certification that

remains in effect until there is a change in leases status or ownership.

On August 10, 1999, we published a final rule titled "Amendments Gas Valuation Regulations for Indian Leases" (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation). The new rule requires lessees to elect to perform either actual dual accounting, under 30 CFR § 206.176 (64 FR 43506), or the alternative methodology for dual accounting under 30 CFR § 206.173 (64 FR 43506).

By Dear Payor letter dated December 1, 1999, we notified lessees to report the dual accounting election on a monthly basis using new calculation method codes 04, Dual Accounting (actual dual accounting), or 05, Percent of Increase (alternative dual accounting), on the Report of Sales and Royalty Remittance, Form MMS-2014 (OMB Control Number 1010-0022). We are currently reengineering our business processes, and as part of this effort, we have redesigned and streamlined Form MMS-2014, effective October 1, 2001 (OMB Control Number 1010-0140). The revised Form MMS-2014 does not contain the dual accounting election information. Therefore, we are revising Form MMS-4410, so that this dual accounting election information continues to be reported to us. The revised Form MMS-4410 will reduce the payors burden of submitting the dual accounting election on a monthly basis on Form MMS-2014 to submitting the information every 2 years or whenever the payor elects alternative dual accounting.

Responses to this dual accounting requirement are mandatory for all Indian gas leases (except leases on the Osage Indian Reservation), whether the respondent's gas produced from an Indian lease is processed or not. Proprietary information is requested and protected, and there are no questions of a sensitive nature involved in this collection of information.

Frequency: On occasion.

Estimated Number and Description of Respondents: 370 payors on approximately 2,340 Indian gas leases.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,717 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour cost" burdens.

Comments: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor, and a person is not

required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. We will summarize written responses to this notice and address them in our submission for OMB approval, including any appropriate adjustments to the estimated burden.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified any non-hour cost burdens for the information collection aspects of Form MMS-4410. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities.

Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208-7744.

May 23, 2001.

Barbara Desiderio,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 01-14274 Filed 6-5-01; 8:45 am]

BILLING CODE 4310-MR-W

DEPARTMENT OF THE INTERIOR

Minerals Management Service

RIN 1010-AB57

Major Portion Prices and Due Dates for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of major portion prices and corrections.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published on August 10, 1999, require MMS to determine major portion values and notify industry by publishing the values in the **Federal Register**. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion value. This notice provides the major portion values and due dates for November and December 2000 production months. In addition, this notice provides a major portion price and due date for the Alabama-Coushatta designated area for April 2000, as well as corrections to Alabama-Coushatta major portion prices for September and October 2000, and a new due date for those months.

EFFECTIVE DATE: January 1, 2000.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: John Barder, Indian Oil and Gas Compliance Asset Management, MMS; telephone, (303) 275-7234; FAX, (303) 275-7470; E-mail, John.Barder@mms.gov; mailing address, Minerals Management Service, Minerals Revenue Management, Indian Oil and Gas Compliance Asset Management, P.O. Box 25165, MS 396G3, Denver, Colorado 80225-0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule titled "Amendments to Gas Valuation Regulations for Indian Leases," (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation).

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone

for each production month beginning January 2000 along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii). If additional royalties are due based on a published major portion price, the lessee must

submit an amended Form MMS-2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest under 30 CFR 218.54 will accrue from the due date

until payment is made and an amended Form MMS-2014 is received. The table below lists the major portion prices for all designated areas not associated with an Index Zone and the due date for payment of additional royalties.

GAS MAJOR PORTION PRICES AND DUE DATES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

MMS-designated areas	November 2000 (MMBtu)	December 2000 (MMBtu)	Due date
Alabama-Coushatta	\$4.71	\$6.83	07/02/2001
Blackfeet Reservation	4.13	4.79	07/02/2001
Fort Belknap	4.52	5.33	07/02/2001
Fort Berthold	2.18	3.09	07/02/2001
Fort Peck Reservation	3.12	4.29	07/02/2001
Navajo Allotted Leases in the Navajo Reservation	4.51	6.34	07/02/2001
Rocky Boys Reservation	3.86	5.58	07/02/2001
Turtle Mountain Reservation	1.27	1.44	07/02/2001
Ute Allotted Leases in the Uintah and Ouray Reservation	4.43	5.80	07/02/2001
Ute Tribal Leases in the Uintah and Ouray Reservation	4.42	5.09	07/02/2001

GAS MAJOR PORTION PRICES AND DUE DATES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE [Corrections/Additions]

MMS-designated area	April 2000 (MMBtu)	September 2000 (MMBtu)	October 2000 (MMBtu)	Due date
Alabama-Coushatta	\$2.95	\$4.81	\$5.48	07/02/2001

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999.

Dated: May 23, 2001.

Barbara Desiderio,

*Acting Associate Director for Minerals
Revenue Management.*

[FR Doc. 01-14273 Filed 6-5-01; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-416 and 731-TA-948 (Preliminary)]

Individually Quick Frozen Red Raspberries from Chile

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701-TA-416 (Preliminary) and antidumping investigation No. 731-TA-948 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act)

to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Chile of individually quick frozen red raspberries, provided for in subheading 0811.20.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Chile and sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by July 16, 2001. The Commission's views are due at the Department of Commerce within five business days thereafter, or by July 23, 2001.

For further information concerning the conduct of these investigations 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 and B (19 CFR part 207).

EFFECTIVE DATE: May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on May 31, 2001, by the IQF Red Raspberry Fair Trade Committee, Washington, DC.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in

sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 21, 2001, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-205-3191) not later than June 18, 2001, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 26, 2001, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may

file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, 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.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: June 1, 2001.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 01-14289 Filed 6-5-01; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; reinstatement with change, of a previously approved collection for which approval has expired; COPS MORE (Making Officer Redeployment Effective) '98 Progress Report.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 14, 2001 (Vol 66, page 14937), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until July 6, 2001. This

process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) 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: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20503.

Written comments and/or 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 function 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

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* COPS MORE (Making Officer Redeployment Effective) '98 Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 037/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: state, Local or Tribal Government Agencies that have received funding under the COPS

MORE '98 grant program are required to respond.

The information collected on the COPS MORE '98 Progress Report is necessary track summary data on the characteristics of the civilians hired, and/or the requirement purchased with COPS funding and to monitor the progress of the grantee in implementing their COPS MORE '98 Grant. In addition, submission of the COPS MORE '98 Progress Report will assist the COPS Office in identifying recipients which may be in need of technical assistance concerning the proper utilization of their COPS MORE '98 Grant Award.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* COPS MORE '98 Progress Report: Approximately 1,830 respondents, at 5 hours per respondent (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The approximated number of burden hours associated with this information collection is 9,150 hours. If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: May 31, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01-14172 Filed 6-5-01; 8:45 am]

BILLING CODE 4410-AT-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information collection Under Review; Request to Enforce Affidavit of Financial Support and Intent to Petition for custody for Public Law 97-359 Amerasian.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 6, 2001.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97-359 Amerasian.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-363. 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 and households. This form is used to determine whether an Affidavit of Financial Support and Intent to Petition for Legal Custody requires enforcement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 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: May 29, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01-14260 Filed 6-5-01; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Alien Crewman Landing Permit.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 6, 2001.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those

who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:*

Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Alien Crewman Landing Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-95 A&B. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. This form is used by the INS in compliance with Sections 251 and 252 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 433,000 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35,939 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: May 29, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01-14261 Filed 6-5-01; 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; Alien Change of Address Card.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 6, 2001.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, 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:* Alien Change of Address Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form AR-11. Records Operations, 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. Section 265 of the Immigration and Nationality Act requires aliens in the United States to inform the Immigration and Naturalization Service of any change of address. This form provides a standardized format for compliance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total burden (in hours) associated with the collection:* 20,750 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 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, National Place Building, Washington, DC 20530.

Dated: May 31, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01-14262 Filed 6-5-01; 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 Stay of Deportation or Removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the

public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 6, 2001.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

Title of the Form/Collection: Application for Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-246. Detention and Deportation, 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 by the Immigration and Naturalization Service to determine the eligibility of an applicant for stay of deportation or removal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

If you have 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, National Place Building, Washington, DC 20530.

Dated: May 31, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice; Immigration and Naturalization Service.

[FR Doc. 01-14263 Filed 6-5-01; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Notice to Student or Exchange Visitor.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 6, 2001.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-515. 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 to notify students or exchange visitors admitted to the United States as nonimmigrants that they have been admitted without required forms and that they have 30 days to present the required forms and themselves to the appropriate office for correct processing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 249 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 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, National Place Building, Washington, DC 20530.

Dated: May 31, 2001.

Richard A. Sloan,

*Department Clearance Officer, United States
Department of Justice, Immigration and
Naturalization Service.*

[FR Doc. 01-14264 Filed 6-5-01; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

United States Employment Service & America's Labor Market Information System; ET Handbook No. 406 (ETA 9002 Data Preparation Handbook), and Vets 200 Report and Specifications; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, we are soliciting comments concerning the proposed revisions to the collection of the ETA 9002 and VETS 200 Reports in accordance with the ET Handbook 406 (ETA 9002 Data Preparation Handbook), and the VETS 200 Specifications, respectively. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before August 6, 2001.

ADDRESSES: Send comments to Gay Gilbert, Chief, Division of United States Employment Service & ALMIS, U.S. Department of Labor, Office of Career Transition Assistance, 200 Constitution Avenue, NW., Room C-4514, Washington, DC 20210, telephone: 202-693-3428 (this is not a toll-free number) facsimile: 202-693-2874 (this is not a toll-free number), e-mail: ggilbert@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background:

The ET Handbook No. 406 (ETA 9002 Data Preparation Handbook) provides instructions for completing the ETA 9002 Reports. The ETA 9002 Reports collect information on the activities administered by the public labor exchange in each State and on the outcomes attributable to these activities. The VETS 200 Report and Specifications collect information on the labor exchange activities provided to veterans by Disabled Veterans' Outreach Program (DVOP) specialists and Local Veterans' Employment Representatives (LVER's) within the public labor exchange in each State. We are revising the ET Handbook No. 406 (ETA 9002 Data Preparation Handbook) and VETS 200 Report and Specifications to reflect current federal reporting requirements and to provide for the reporting of performance outcome information derived using the labor exchange performance measures.

In 2000, we initiated the development of a labor exchange performance measurement system which would consist of three elements: (1) labor exchange performance measures, (2) data collection and reporting procedures, and (3) procedures for establishing expected levels of performance. A Federal-State workgroup consisting of representatives from the Employment and Training Administration (ETA), fifteen State agencies, the National Association of State Workforce Agencies (NASWA), and the Veterans' Employment and Training Service (VETS) met three times during 2000 to develop the framework of a labor exchange performance measurement system.

On August 14, 2000, we published proposed labor exchange performance measures in the **Federal Register** (65 FR 49708, *et seq.*). Based on consideration of comments received, we have established four performance measures for the public labor exchange, as published in the **Federal Register** on May 31, 2001.

At the third of its meetings, the labor exchange performance measurement system workgroup recommended revisions to the reporting requirements for the public labor exchange. We have revised the ET Handbook No. 406 (ETA 9002 Data Preparation Handbook) to allow for the reporting of performance outcome information derived from the labor exchange performance measures, based on consideration of the workgroup's recommendations and to reflect current Federal reporting requirements.

Services provided by DVOPs and LVERs to veterans as part of the public labor exchange are reported on the VETS 200 Report—distinct from the ETA 9002 Reports. The VETS 200 Report and Specifications are revised to account for current Federal reporting requirements and to allow for reporting on services provided by DVOP and LVER staff. The VETS 200 Report and Specifications mirror and are compatible with those for the ETA 9002 Reports. Both the ET Handbook No. 406 and the VETS 200 Report and Specifications are available at www.workforcesecurity.doleta.gov/news/news.asp or by contacting the office listed in the addressee section of this notice.

Information is collected on the ETA 9002 and VETS 200 Reports under the following authority:

A. Wagner-Peyser Act sec. 3(a), 29 U.S.C. 49b(a)

The Secretary shall assist in coordinating the State public employment services throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedures, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the States.

B. Wagner-Peyser Act sec. 3(c)(2), 29 U.S.C. 49b(c)

The Secretary shall—
(2) assist in the development of continuous improvement models for such nationwide system that ensure private sector satisfaction with the system and meet the demands of job seekers relating to the system.

C. Wagner-Peyser Act sec. 7(b), 29 U.S.C. 49f(b)

Ten percent of the sums allotted to each State pursuant to section 49e of this title shall be reserved for use in accordance with this subsection by the Governor of each such State to provide—

(1) performance incentives for public employment service offices and programs, consistent with performance standards established by the Secretary, taking into account direct or indirect placements (including those resulting from self-directed job search or group job search activities assisted by such offices or programs), wages on entered

employment, retention, and other appropriate factors.

D. Wagner-Peyser Act sec. 10(c), 29 U.S.C. 49i(c)

Each State receiving funds under this Act shall—

(1) make such reports concerning its operations and expenditures in such form and containing such information as shall be prescribed by the Secretary, and

(2) establish and maintain a management information system in accordance with guidelines established by the Secretary designed to facilitate the compilation and analysis of programmatic and financial data necessary for reporting, monitoring and evaluating purposes.

E. Wagner-Peyser Act sec. 13(a), 29 U.S.C. 49l(a)

The Secretary is authorized to establish performance standards for activities under this Act which shall take into account the differences in priorities reflected in State plans.

F. Wagner-Peyser Act sec. 15(e)(2)(I), 29 U.S.C. 49l-2(e)(2)(I)

(e) State responsibilities.—

(2) Duties.—In order to receive Federal financial assistance under this section, the State agency shall—

(I) utilize the quarterly records described in section 2871(f)(2) of this title to assist the State and other States in measuring State progress on State performance measures.

G. Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, Executive Office of the President, Office of Management and Budget (66 FR 3829–3831); and “Revisions to the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, (62 FR 58781–58790).

II. Review Focus

The Department of Labor is particularly interested in comments which:

- 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;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and

- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

We have revised the elements of services and outcomes required to be reported by category of job seeker on the ETA 9002 to better reflect the services provided by the modern labor exchange and to meet current Federal data collection requirements. The revised ETA 9002 now provides for the reporting of employment outcomes of job seekers, including veterans, as well as the job seeker and employer customer satisfaction scores. Because employment outcome information is dependent on unemployment insurance (UI) wage record data, it will not be available at the same time as information on the number of job seekers who are registered job seekers or who receive labor exchange services. Therefore, outcome information for job seekers and veterans will be collected on separate reports from information on services. Also, data elements required to be reported about job openings employers list with the labor exchange are revised to be consistent with the Occupational Information Network—Standard Occupational Classification (O*NET–SOC) system and the North American Industry Classification System (NAICS). We are eliminating the VETS 300 and Manager's Report. No changes are being proposed for these items and VETS is handling these items separate.

Listed below is a description of the information that will be collected on each of the proposed ETA 9002 and VETS 200 reports:

ETA 9002 A: Services to Job Seekers.

ETA 9002 B: Services to Veterans.

ETA 9002 C: Performance Outcomes—Job Seekers.

ETA 9002 D: Performance Outcomes—Veterans.

*ETA 9002 E: Job Openings Received by Occupation (O*NET–SOC) and Industry (NAICS).*

VETS 200 A: DVOP Quarterly Report.

VETS 200 B: LVER Quarterly Report.

VETS 200 C: DVOP/LVER Quarterly Report.

The employment outcomes of registered job seekers will be derived by matching their Social Security Numbers with employment information contained in State databases, including the UI wage record database, the State

Directory of New Hires (SDNH) database, or any other records the State agency may have access to that reliably indicate entry into employment. We anticipate that State agencies will have the option of using the wage record interchange system (WRIS) to obtain UI wage record information from other States as this system is implemented.

We propose to implement a rolling four-quarter reporting period for the labor exchange performance measurement system. For the job seeker and veterans reports, cohorts of registered job seekers are identified according to their quarter of registration or beginning of a new registration year. States submit information on the Services to Job Seekers (ETA 9002 A) and Services to Veterans (ETA 9002 B) reports forty-five days following the completion of each calendar quarter. The reports include information on the number of active job seekers and the services provided to them during the four quarter reporting period. Data on performance outcomes, to be reported on the Performance Outcomes: Job Seekers (ETA 9002 C) and Performance Outcomes: Veterans (ETA 9002 D) reports, often will not be available until several quarters after a job seeker has registered with the labor exchange. States report information on the ETA 9002 C and D reports forty-five days following the completion of the quarter in which outcome data become available for four consecutive cohorts of registered job seekers. As outcome data become available for different performance measures at different times, the cohorts of registered job seekers for which data are being reported are identified on the reports next to each performance measure. (Note: during transition to the new reporting system, it may be necessary to report less than four consecutive quarters of data until the system is fully implemented).

This system of reporting will provide program managers with the most current information available for program management, while also allowing for performance outcome information to be paired with information on services for purposes of evaluation, once complete information on a particular cohort becomes available. The rolling four quarter reporting period will provide program managers and other users of labor exchange information with the most current data available for a one-year period of time, during any quarter of the year. This system of reporting also will diminish the impact of seasonal variations in the reports on services or outcomes by always including each of the four calendar quarters in any

particular reporting period. Once complete information for the four cohorts registering during a particular program year becomes available, final program year reports may then be assembled. This information will then be used to assess a State's success in meeting its performance goals.

ETA and VETS intend to begin transition to use of the proposed

reporting procedures in the ET Handbook No. 406 (ETA 9002 Data Preparation Handbook) and VETS 200 Report and Specifications during PY 2001, with the reporting procedures in the proposed handbook being followed no later than July 1, 2002. State agencies will be encouraged to submit the ETA 9002 and VETS 200 reports electronically.

Type of Review: Revision

Agency: Employment and Training Administration.

Title: ETA 9002 and VETS 200.

OMB Number: 1205-0240.

Recordkeeping: 2 years.

Affected Public: State Government.

Total Respondents: 54 States and territories.

Cite/reference	Total respondents	Frequency	Total responses	Average minutes per response	Burden hours
ETA 9002A	54	Quarterly	216	480	1728
ETA 9002B	54	Quarterly	216	480	1728
ETA 9002C	54	Quarterly	216	480	1728
ETA 9002D	54	Quarterly	216	480	1728
ETA 9002E	54	Quarterly	216	480	1728
VETS 200A	53	Quarterly	212	480	1696
VETS 200B	53	Quarterly	212	480	1696
VETS 200C	53	Quarterly	212	480	1696
Totals			1716		13728

Total Burden Cost (capital/startup): \$20,000.

Total Burden Cost (operating/maintaining): \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 25, 2001.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 01-14189 Filed 6-5-01; 8:45 am]

BILLING CODE 4510-30-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01-066)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Thursday, June 28, 2001, 8 a.m. to 1 p.m.; and Friday, June 29, 2001, 8:15 a.m. to 2 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code Z, National

Aeronautics and Space Administration, Washington, DC 20546, 202/358-0732.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, June 28, 2001, from 1 p.m. to 5 p.m. in accordance with 5 U.S.C. 552b(c)(9)(B), to hear briefings on the FY 2003 Performance Plan. Friday, June 29, 2001, will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- OMB Perspectives on Budget
- Space Launch Initiative Update
- Space Station Update
- Committee/TaskForce/Working Group Reports
- Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 1, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01-14283 Filed 6-5-01; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/conference call for a working group of

NCD's advisory committee—International Watch. Notice of this meeting is required under section 10(a)(1)(2) of the Federal Advisory Committee Act (P.L. 92-463).

International Watch: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

Work Group: International Convention on the Human Rights of People with Disabilities.

DATE AND TIME: June 29, 2001, 12:00 p.m.–1:00 p.m. EDT.

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Kathleen A. Blank, Attorney/Program Specialist, NCD, 1331 F Street NW., Suite 1050, Washington, DC 20004; 202-272-2004 (Voice), 202-272-2074 (TTY), 202-272-2022 (Fax), kblank@ncd.gov (e-mail).

Agency Mission: NCD is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Open Meetings/Conference Calls: This advisory committee meeting/conference call of NCD will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all International Watch meetings/conference calls and will be available after the meeting for public inspection at NCD.

Signed in Washington, DC, on May 31, 2001.

Jeffrey T. Rosen,

General Counsel and Director of Policy.

[FR Doc. 01-14142 Filed 6-5-01; 8:45 am]

BILLING CODE 6820-MA-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that three meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, as follows:

Media Arts (Creativity and Organizational Capacity categories): June 26-27, 2001, Room 716. A portion of this meeting, from 1:45 p.m. to 2:45 p.m. on June 27th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on June 26th and 27th, and from 9:00 a.m. to 1:45 p.m. and 2:45 p.m. to 5:30 p.m. on June 28th, will be closed.

Music, Section A (Creativity and Organizational Capacity categories): July 9-12, 2001, Room 716. A portion of this meeting, from 11:00 a.m. to 12:30 p.m. on July 12th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on July 9th-11th and from 9:00 a.m. to 11:00 a.m. and 12:30 p.m. to 3:00 p.m. on July 12th, will be closed.

Presenting (Creativity and Organizational Capacity categories): July 16-17, 2001, Room 716. A portion of this meeting, from 9:45 to 11:45 a.m. on

July 17th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on July 16th, and from 9:00-9:45 a.m. and 11:15 a.m. to 12:30 p.m. on July 17th, will be closed.

Music, Section B (Creativity and Organizational Capacity categories): July 23-25, 2001, Room 714. A portion of this meeting, from 2:00 p.m. to 2:30 p.m. on July 25th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on July 23rd-24th and from 9:00 a.m. to 2:00 p.m. and 3:30 p.m. to 4:30 p.m. on July 25th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

May 31, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01-14191 Filed 6-5-01; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237, 50-249, 50-254 and 50-265]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-19 and DPR-25, issued to Exelon Generation Company, LLC, (EGC, or the licensee), for the operation of Dresden Nuclear Power Station, Units 2 and 3, respectively, located in Grundy County, Illinois, and Facility Operating License Nos. DPR-29 and DPR-30, issued to EGC, for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, respectively, located in Rock Island County, Illinois.

The proposed amendment, requested by letter dated February 22, 2001, as supplemented by letter dated May 4, 2001, would revise the technical specifications to reduce the reactor vessel water level—low scram and isolation setpoints by eight inches.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The vessel water level—low scram and isolation functions are not involved in the initiation of accidents or transients. Therefore, reducing the allowable value for these functions does not affect the probability of an accident previously evaluated.

Reducing the allowable value for the vessel water level—low scram and isolation functions does not affect the consequences of the previously evaluated transients and accidents, since other reactor protection and engineered safeguards functions are designed to be the primary functions that initiate to mitigate these events. These functions include the ECCS initiation signals that occur on low-low water level and high drywell pressure and the containment isolation signals that occur on high steam line flow and low steam line pressure. Therefore the consequences of previously evaluated transients and accidents are not affected by the proposed changes.

Does the Proposed Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed change to reduce the allowable value for the vessel water level—low scram and isolation functions does not involve a plant equipment change or affect the purpose of the scram and isolation functions. Therefore the proposed change does not result in the possibility of a new or different kind of accident.

Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Reducing the allowable value for the vessel water level—low scram and isolation functions does not affect the consequences of the previously evaluated transients and accidents, since other reactor protection and engineered safeguards functions are designed to be the primary functions that initiate to mitigate these events. These functions include the ECCS initiation signals that occur on low-low water level and high drywell pressure and the containment isolation signals that occur on high steam line flow and low steam line pressure. All of the results of these analyses remain within the required acceptance criteria. Therefore, the margin of safety is not reduced for any event evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 6, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and

Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific

sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Mr. Robert Helfrich, Senior Counsel, Nuclear, Mid-West Regional Operating Group, Exelon Generation Company, LLC, 1400 Opus Place, Suite 900, Downers Grove, Illinois, 60515, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 22, 2001, as supplemented by letter dated May 4, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 31st day of May, 2001.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01-14268 Filed 6-5-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 50-388]

In the Matter of PPL Susquehanna, LLC, Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2); Order Approving Application Regarding Proposed Corporate Restructuring

I

PPL Susquehanna, LLC (PPL Susquehanna or the licensee), owns 90 percent and Allegheny Electric Cooperative, Inc., owns 10 percent of the Susquehanna Steam Electric Station (SSES), Units 1 and 2, located in Luzerne County, Pennsylvania. PPL Susquehanna exclusively operates the facility.

PPL Susquehanna is a wholly owned, direct subsidiary of PPL Generation, LLC, which is a wholly owned, direct subsidiary of PPL Energy Funding Corporation. PPL Energy Funding Corporation is a wholly owned, direct subsidiary of PPL Corporation, the ultimate parent of PPL Susquehanna.

PPL Susquehanna and Allegheny Electric Cooperative, Inc., jointly hold Facility Operating Licenses Nos. NPF-14 for SSES Unit 1 and NPF-22 for SSES Unit 2, issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50) on July 17, 1982, and March 23, 1984, respectively.

II

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, PPL Susquehanna filed an application dated March 6, 2001, which was supplemented by a submittal dated April 4, 2001 (collectively herein referred to as the application), requesting the Commission's consent to the indirect transfer of the SSES Units 1 and 2 licenses, to the extent held by PPL Susquehanna, in connection with the proposed corporate restructuring of PPL Susquehanna's parent organization involving the addition of PPL Energy Supply, LLC, as an intermediary, indirect parent of PPL Susquehanna. The application does not involve Allegheny Electric Cooperative, Inc.

Upon completion of the restructuring, PPL Energy Supply, LLC, will become a wholly owned, direct subsidiary of PPL Energy Funding Corporation and the direct parent of PPL Generation, LLC. PPL Susquehanna, therefore, will become an indirect wholly owned subsidiary of PPL Energy Supply, LLC. No physical changes to the SSES facilities or operational changes are proposed in the application. PPL Susquehanna, the SSES Units 1 and 2 licensee authorized to operate and maintain the facility, and PPL Susquehanna and Allegheny Electric Cooperative, Inc., the licensed owners of SSES Units 1 and 2, will continue to be so following the restructuring. No direct transfer of the license will result from the planned restructuring. Notice of this request for approval was published in the **Federal Register** on April 25, 2001 (66 FR 20839). No hearing requests or written comments were received.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application and other information before the Commission, the NRC staff has determined that the proposed restructuring of PPL Susquehanna's parent organization described above will not affect the qualifications of PPL Susquehanna as a holder of the SSES Units 1 and 2 licenses, and that the indirect transfer of the licenses, to the

extent effected by the restructuring, is otherwise consistent with applicable provision of laws, regulations, and orders issued by the Commission subject to the conditions set forth herein. These findings are supported by a safety evaluation dated May 25, 2001.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, It is hereby ordered that the application regarding the indirect license transfer referenced above is approved subject to the following condition:

Should the corporate restructuring described above not be completed by June 1, 2002, this Order shall become null and void, provided, however, upon application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

For further details with respect to this Order, see the initial application dated March 6, 2001, the supplemental submittal dated April 4, 2001, and the safety evaluation dated May 25, 2001, which are available for inspection at the Commission's Public Document Room, U.S. Nuclear Regulatory Commission, One White Flint North, Room O-1 F21, 11555 Rockville Pike, Rockville, MD 20852-2738, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.NRC.gov>).

Dated at Rockville, Maryland, this 25th day of May 2001.

For the Nuclear Regulatory Commission.

David B. Matthews,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 01-14267 Filed 6-5-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting of the Interagency Steering Committee on Radiation Standards

AGENCIES: Nuclear Regulatory Commission and Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will host a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) on June 21, 2001, in Rockville, Maryland.

The purpose of ISCORS is to foster early resolution and coordination of regulatory issues associated with radiation standards. Agencies represented on ISCORS include the NRC, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Defense, U.S. Department of Transportation, the Occupational Safety and Health Administration of the U.S. Department of Labor, and the U.S. Department of Health and Human Services. The Office of Science and Technology Policy, the Office of Management and Budget, and a State Department representative may be observers at meetings. The objectives of ISCORS are to: (1) Facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution. ISCORS meetings include presentations by the chairs of the subcommittees and discussions of current radiation protection issues. Committee meetings normally involve pre-decisional intra-governmental discussions and, as such, are normally not open for observation by members of the public or media. One of the four ISCORS meetings each year is open to all interested members of the public. There will be time on the agenda for members of the public to provide comments. Summaries of previous ISCORS meetings are available at the ISCORS web site, www.iscours.org and the final agenda for the June meeting will be posted on the site shortly before the meeting.

DATES: The meeting will be held from 1 p.m. to 5 p.m. on Thursday, June 21, 2001.

ADDRESSES: The meeting will be held in the NRC auditorium, at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

James Kennedy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-415-6668; fax 301-415-5398; E-mail jek1@NRC.GOV.

SUPPLEMENTARY INFORMATION: Visitor parking around the NRC building is limited; however, the NRC auditorium

is located adjacent to the White Flint Metro Station on the Red Line.

Dated at Rockville, MD, this 29th day of May, 2001.

For the Nuclear Regulatory Commission.

Thomas Essig,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01-14269 Filed 6-5-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on June 22, 2001, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, June 22, 2001—1:00 p.m. until the conclusion of business.*

The Subcommittee will discuss the need for revising 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants." The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Sam Duraiswamy (telephone 301/415-7364) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 31, 2001.

James E. Lyons,

*Associate Director for Technical Support,
ACRS/ACNW.*

[FR Doc. 01-14266 Filed 6-5-01; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44368; File No. SR-NYSE-00-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 36.30 and Rule 104A.50

May 30, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 3, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange submitted an amendment to the proposed rule change on May 21, 2001.³ The Commission is publishing this notice to solicit comments on the

proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 36.30, concerning communications from specialists' posts on the floor of the Exchange, and NYSE Rule 104A.50, concerning specialists reporting requirements. The text of the proposed rule change is set forth below. Deletions are in brackets. Additions are in italics.

Rule 36 Communications Between Exchange and Members' Offices

* * * * *

.30 Specialist Post Wires—[With the approval of the Exchange, a specialist unit may maintain a telephone line at its stock trading post location to the off-Floor offices of the specialist unit or the unit's clearing firm. Such telephone connection shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities, but may be used to enter options or futures hedging orders through the unit's off-Floor office or the unit's clearing firm, or through a member (on the floor) of an options or futures exchange.]

A. With the approval of the Exchange, a specialist unit may maintain a communication link at its stock trading post location:

1. To the off-Floor office of the specialist unit or the unit's clearing firm which may be used for the purpose of entering options and futures hedging orders, and orders in a foreign security;

2. To a member (on the Floor) of an options or futures exchange for the purpose of entering options and futures hedging orders;

3. To an automated trading system registered as a broker-dealer under the Securities Exchange Act of 1934 (a "registered broker-dealer") or under the auspices of a registered broker-dealer or under the auspices of a foreign broker-dealer subject to and in accordance with Rule 15a-6 under the Securities Exchange Act of 1934 ("Rule 15a-6") for the purpose of entering orders in a foreign security; and

4. To a registered broker-dealer or a foreign broker-dealer subject to and in accordance with Rule 15a-6 for the purpose of entering orders in a foreign security.

B. No such communication link shall be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities.

C. For purposes of the Rule, a foreign security is a security traded on the Exchange which is a foreign ordinary security, a depositary receipt or a depositary share that represents a foreign company's publicly traded security. A specialist registered in the depositary receipt or share may enter an order either in such security or the related ordinary security. A specialist registered in the ordinary security may enter an order in such security, or where applicable, a related depositary receipt or share.

* * * * *

Rule 104A Specialists—General

* * * * *

.50 Equity Trading Reports—Every specialist (including relief specialists) must keep a record of purchases and sales initiated on the Floor (including purchases and sales resulting from commitments or obligations to trade issued from the Exchange through ITS or any other Application of the system), in stocks in which he is registered, for an account in which he has an interest. Specialists must also maintain records of purchases and sales in the Exchange's off-hours trading sessions. Such record must show the sequence in which each transaction actually took place, the time thereof, and whether such transaction was at the same price or in what respect it was at a different price in relation to the immediately preceding transaction in the same stock. The price designations for transactions made in another market center through ITS or any other applications of the System are to be determined from the immediately preceding transaction price on the Exchange at the time the commitment or obligation to trade is issued. Specialists and relief specialists are required to report such transactions in such automated format and with such frequency as may be prescribed by the Exchange. Paragraph 2104.12 sets forth circumstances under which specialists who maintain investment accounts in specialty stocks are required to submit an equity trading data report.

Options trading data reports—Every specialist (including relief specialists) must keep a record of all options purchases and sales to hedge his specialty stock positions as permitted by Rule 105 and must report such transactions in such automated format and with such frequency as may be prescribed by the Exchange.

Foreign securities reports—Every specialist (including relief specialists) must keep a record of all purchases and sales of foreign securities (as defined in Rule 36.30) for an account in which he has an interest. Specialists and relief specialists are required to report such transactions in such automated format and with such frequency as may be prescribed by the Exchange.

Inquiries.—Inquiries in connection with these reports should be addressed to Market Surveillance, 11 Wall Street, 10th Floor, telephone 656-6755.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety ("Amendment No. 1"). Amendment No. 1 withdraws the proposed amendments to NYSE Rule 36.20 in the original filing that would have permitted certain off-floor communications by members on the floor. The NYSE has stated that these amendments will be subject to a separate filing. Amendment No. 1 also amends proposed NYSE Rule 36.30A to clarify the manner in which Exchange specialists may communicate proprietary orders in foreign specialty stock from their post to off-floor broker-dealers. Finally, Amendment No. 1 amends proposed NYSE Rule 36.30C to include in the definition of foreign security depositary shares that represent a foreign company's publicly traded security.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 36 (communications Between Exchange and Members' Offices) governs the establishment of telephone or electronic communications between the Exchange trading floor and any other location. The Exchange proposes to amend Rule 36 with respect to communication links between specialist posts and off floor locations.

Specialists Post Wires. NYSE Rule 36.30 governs the use of telephone lines at a specialist unit's post. The rule currently permits telephone lines from the post to the unit's off-floor offices and to the unit's clearing firm. The rule also permits specialists to have telephone lines to the floor of an options or futures exchange for the purpose of entering hedging orders on the floors of those exchanges.

The Exchange proposes to amend NYSE Rule 36.30 to more clearly identify the types of communications that may emanate from the post. The words "communication link" would replace "telephone" to encompass a wider range of communication methods. The types of communications would be expanded to give the specialist the ability to enter orders in foreign stocks directly from the post. In that regard, the rule would permit a specialist to enter orders to purchase or sell foreign securities through a broker-dealer registered with the Commission or directly with a foreign broker-dealer pursuant to Rule 15a-6 under the Act.⁴ The prohibition on receiving orders for the purchase or sale of securities at the post would be retained. The term "foreign security" would be defined to include a foreign ordinary security, a depositary receipt or a depositary share representing a foreign security.

At the end of 1999, there were a total of 394 foreign issues listed on the Exchange. A total of 16.5 billion shares of foreign stock traded on the Exchange, representing an increase of 11% above 1998 totals. As foreign listing and trading expands, issues related to foreign securities have arisen in discussions between the Exchange and specialists. For example, in 2000, amendments to NYSE Rule 104 were submitted to the Commission to permit, without first obtaining floor official approval, specialists to effect certain stabilizing transactions in a foreign

stock to achieve price parity with that stock on its home country market.⁵

Similarly, the Exchange believes that specialists may need to act quickly to buy or sell or obtain information about a foreign security specialty stock in situations where the home country or another market represents the best opportunity to do so. The Exchange proposes to amend NYSE Rule 36.30 to permit specialists to have any commercially available communication link at the post over which it can communicate directly to place an order in a foreign security for the specialists's own account or seek information on the current market for a foreign security.⁶ The communication links could be used to receive information on stocks, data for the U.S. or foreign markets, vendor services or news. The receipt of information would not be restricted, and could include data from competing markets. The communication link would not be used to transmit orders to specialists for execution on the Exchange or to give nonmembers market look information. Specialist units would continue to have the ability to transmit hedging orders in options or futures from the post to its off-floor offices, its clearing firm, or a member on the floor of an options or futures exchange.

The Exchange believes that the availability of all communication links to specialists should be permitted. The proposed rule change, however, would not permit orders to be transmitted over these links either into the floor or to another market, except by specialists in the circumstances outlined in NYSE Rule 36.30.

Foreign Stock Transaction Reports. The Exchange also proposes to amend NYSE Rule 104A.50 to require specialists to record and report to the Exchange the details of all proprietary transactions executed by the specialist unit away from the Exchange in foreign securities. Specialists would be informed that the reports would be required to be submitted on Form 81, the electronic reporting mechanism already used by specialists to report

⁵ See File No. SR-NYSE-00-30. This proposal has not yet been approved by the Commission. In this filing the Exchange noted that the proposed change in SR-NYSE-2000-30 to NYSE Rule 104 would give specialists the ability to react quickly to changes in the price of foreign securities on the Exchange based on price changes in the primary market for the foreign security. The Exchange believes that this would enhance the specialist's ability to maintain markets that are fair and orderly for these stocks.

⁶ Proposed Rule 36.30A states that any such purchase or sale must be through a broker-dealer registered with the Commission or directly with a foreign broker-dealer pursuant to Rule 15a-6 under the Act.

proprietary transactions in specialty stocks.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change supports the mechanism of free and open markets by providing for increased means by which communications to and from the floor of the Exchange may take place, while continuing to prohibit entry of orders from off the floor directly to the post, or to the point of sale.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

⁴ 17 CFR 240.15a-6.

⁷ 15 U.S.C. 78f(b)(5).

Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-00-31 and should be submitted by June 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-14155 Filed 6-5-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44369; File No. SR-Phlx-2001-26]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to ROT Vocalization Requirements for Options Quotations

May 30, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Commentary .01 to Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System

("AUTO-X"), to add an express vocalization requirement for Phlx Registered Options Traders ("ROT's")³ whose quotation for a particular option series is different from the disseminated quote. The proposal also would codify the Exchange's policy that the disseminated market is deemed to represent the quotation of all ROTs in that option, unless otherwise indicated pursuant to Phlx Rule 1080. The proposed rule change would be set forth in new subsection (c) of Commentary .01. The text of the proposed rule change is set forth below. New language is in italics.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a)-(j) No change.
Commentary:

.01

(a) Automatic Quotation (Auto-Quote) is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations.

(b) [RESERVED]

(c) *The disseminated market (whether by Auto-Quote or specialized quote feed) is deemed to represent the quotations of all ROTs in that option unless a ROT has expressly indicated otherwise in a clear and audible manner, respecting either a specific series, the class or the option (specifying LEAPs), and with sufficient time for the specialist to take action to update the quote if necessary.*

(d) If options trading systems throttle quotations for at least three minutes, the Chairman of the Board of Governors or his designee may, for capacity management purposes, mandate that the Auto-Quote be set to update quotations based on a certain minimum movement in the underlying security for: (i) all options; (ii) index options only; or (iii) certain specified options, taking into account certain factors that may include, but are not limited to, the price of the underlying security, volatility in the underlying security, or whether there has been any trading volume over the last two trading days. Such mandated minimum setting may continue for a period of 15 minutes, and may be continued every 15 minutes thereafter, provided that the Exchange's options trading systems are throttling

quotations at the end of each such 15-minute period.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify that the quote disseminated by the Exchange's Auto-Quote system⁴ or by a specialist's proprietary system that interfaces with AUTOM ("Specialized Quote Feed"), which electronically prices options, is deemed to be the quote of all ROTs in the crowd unless the ROT has vocalized a different quote in a clear and audible manner with sufficient time for the specialist to take action to update the quote, if necessary.⁵

On September 11, 2000, the Commission issued an order⁶ that requires four of the five options exchanges, including the Phlx to adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option.⁷ Specifically, the Order required by the Exchange to file by March 12, 2001, draft proposed

⁴ Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations.

⁵ The ROT must vocalize a different quote before an order enters the system. If an ROT believes that he or she has been unfairly allocated a portion of the order, he or she can challenge the allocation pursuant to Phlx Rule 124. Telephone call between Rick Rudolph, Counsel, Phlx, Terri Evans, Special Counsel, Division of Market Regulation ("Division"), Commission, and Sonia Patton, Staff Attorney, Division, Commission (May 24, 2001).

⁶ See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000) ("Order").

⁷ See Section IV.B.j. of the Order.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade options for his own account. See Phlx Rule 1014(b).

rules and required the Exchange to take all reasonable steps to promptly stop any such practice or procedure that has not been filed or is not already authorized by rule. The Exchange believes that the proposed rule change is responsive to, and compliant with, the Order.

Currently, Phlx Rule 1080 governs the operation of AUTOM, the Exchange's automated order routing, delivery, execution and reporting system for options. Auto-Quote, one feature of AUTOM, is currently defined in Commentary .01 as the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations.⁸ Alternatively, specialists may elect to establish a specialized proprietary connection ("specialized quote feed") that bypassed the Auto-Quote system. The proposed rule change would codify the Exchange's vocalization requirement when a ROT indicates that his quote in an option is not the Exchange's disseminated quote. Absent such vocalization, the disseminated quote would be deemed to be that of all ROTs in that option.

The current on-floor trading environment, which involves increased trading volume, more option classes traded than ever before, and less physical space within which ROTs operate, has resulted in a natural increase in reliance on technology by ROTs in order to function effectively while providing liquidity in their assigned options. One area of such increased reliance on technology involves quotations in options disseminated electronically by Auto-Quote. The Exchange believes that changes in such quotations occur rapidly, and often simultaneously, in myriad quotations, rendering it difficult to voice each bid or offer as it is being disseminated electronically. Thus, the Exchange believes that it is reasonable to deem the disseminated quote to be that of all ROTs in the option unless they vocally opt out of the disseminated quote.

The proposed rule would require the ROT to specify the series or option class (specifying LEAPS), and would provide for sufficient time within which the specialist could take action to update the quote if necessary. The Exchange is proposing the new language to reflect the fact that the disseminated quote reflects the crowd quote (unless a ROT

has expressly indicated in a clear and audible manner).⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general and furthers the objectives of Section 6(b)(5)¹¹ in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest by clarifying and describing clearly in Exchange rules the requirement that ROTs vocalize any intent to establish quotes that are different from the Exchange's disseminated quote.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the revisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR-Phlx-2001-26 and should be submitted by June 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-14156 Filed 6-5-01; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs, Passport Services

[Public Notice 3687]

Notice of Information Collection Under Emergency Review: Form DS-11, Application for Passport/Registration (Formerly DSP-11) OMB #1405-0004

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.
Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection:
Application for Passport/Registration.

Frequency: On Occasion.

Form Number: DS-11 (Formerly DSP-11).

Respondents: Individuals or Households.

Estimated Number of Respondents:
8,411,550.

Average Hours Per Response: 1/3 hour (20 min.).

⁸ The Exchange is separately proposing new subsection (b) of Commentary .01 to Phlx Rule 1080, which will provide a more thorough description of Auto-Quote. See SR-Phlx-2001-25.

⁹ According to the Phlx, this new language is being proposed inasmuch as ROT's failure to vocalize any different quote from the disseminated quote could be viewed as determining option prices by agreement for purposes of the Order and is therefore required by the Order to be provided for in Exchange rules.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 200.30-3(a)(12).

Total Estimated Burden: 2,803,850.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by May 31, 2001. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202-395-3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202-663-2460.

Dated: May 7, 2001.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State.
[FR Doc. 01-14254 Filed 6-5-01; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF STATE

Bureau of Consular Affairs, Passport Services

[Public Notice 3688]

Notice of Information Collection under Emergency Review: Form DS-3053, Statement of Consent: Issuance of a Passport to a Minor Under Age 14 (OMB #1400-0010)

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection:

Statement of Consent: Issuance of a Passport to a Minor Under Age 14.

Frequency: On Occasion.

Form Number: DS-3053.

Respondents: Individuals or Households.

Estimated Number of Respondents: 1,595,790.

Average Hours Per Response: 1/12 hr. (5 minutes).

Total Estimated Burden: 132,982.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review approval of this collection has been requested from OMB by May 31, 2001. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202-395-3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW, Room H904, Washington, DC 20522, and at 202-663-2460.

Dated: May 8, 2001.

Georgia Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 01-14255 Filed 6-5-01; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF STATE

[Public Notice 3689]

Notice of Information Collection under Emergency Review: Proposal Submission Instructions; OMB Control #1405-0115; Department of State Form Numbers DS-017, DS-2012, DS-2013, DS-2011, DS-2018, DS-2014, DS-2015, DS-2016

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: ECA-IIP/EX.

Title of Information Collection:

Proposal Submission Instructions (PSI).

Frequency: 40 times a year (average), coincidental with Request for Grant Proposal competitions published in the **Federal Register**.

Form Number: DS-017, DS-2012, DS-2013, DS-2011, DS-2018, DS-2014, DS-2015, DS-2016.

Respondents: Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c).

Estimated Number of Respondents: Approximately 800 proposals will be submitted to the Bureau yearly, accompanied by the Proposal Submission Instructions (PSI).

Average Hours Per Response: 20 hours per response.

Total Estimated Burden: 16,000 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by May 31, 2001. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202-395-3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- 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.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to ECA-IIP/EX/PM, 301 4th Street, SW, Washington, DC 20547, who may be reached on (202) 619-4949.

Dated: May 15, 2001.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 01-14256 Filed 6-5-01; 8:45 am]

BILLING CODE 4710-05-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Designation of Senior Agency Official Under Executive Order 12958

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of designation of "Senior Agency Official" for certain purposes under section 5.6 of Executive Order 12958 entitled "Classified National Security Information."

SUMMARY: The General Counsel of the Office of the U.S. Trade Representative has been designated as the senior agency official for purposes of section 1.8(d) of Executive Order 12958 and has the authority, along with the United States Trade Representative (USTR) and the Deputy USTRs, to classify or re-classify information that has not previously been disclosed to the public after a request for it has been received under the Freedom of Information Act (FOIA) or the Privacy Act of 1974.

FOR FURTHER INFORMATION CONTACT: The FOIA Office, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508. The telephone number is (202) 395-3419.

SUPPLEMENTARY INFORMATION: Executive Order 12958 ("the Order") provides that heads of agencies that originate or handle classified information shall designate one or more senior agency officials to carry out certain duties and responsibilities under the Order. On May 10, 2001, U.S. Trade Representative Robert Zoellick designated the position of General Counsel as a "Senior Agency Official" pursuant to the provisions of section 5.6 of the Order. The General Counsel shall have the authority to classify or re-classify information after a request has been received under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act of 1974, 5 U.S.C. 552a, so long as that information has not previously been disclosed to the public. Such classification or re-classification shall be done in a manner that meet the requirements of the Order and on a document-by-document basis.

Sybia Harrison,

Agency FOIA Officer.

[FR Doc. 01-14147 Filed 6-5-01; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; General Aviation Certification and Operations Issues— New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee a new task to evaluate and develop requirements for improved handling of stall characteristics in small airplanes. This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT:

Mike Dahl, Federal Aviation Administration, Central Region Headquarters, 901 Locust, Kansas City, Missouri 64106, (816) 329-4110. *Mike.dahl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

The Task

- Review Subpart B of part 23 and develop requirements for improved handling of stall characteristics in small airplanes. Items to be addressed in the ARAC review include:

1. Stall Characteristics and spin resistance.
2. Stall accidents and prevention methods.
3. Harmonization with similar requirements found in JAR-23.

- Prepare a draft Notice of Proposed Rulemaking (NPRM). The NPRM should include the preamble and rule language along with any supporting legal analysis.

Schedule: This task is to be completed no later than December 10, 2001.

ARAC Acceptance of Task

ARAC accepted the task and assigned the task to the newly formed Stall Characteristics Harmonization Working Group, General Aviation Certification and Operations Issues. The working group will serve as staff to ARAC and assist in the analysis of the assigned task. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA. Recommendations that are received from ARAC will be submitted to the agency's Rulemaking Management Council to address the availability of resources and prioritization.

Working Group Activity

The Stall Characteristics Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on general aviation certification and operations issues held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.
3. Draft the appropriate documents and required analyses and/or any other related materials or documents.
4. Provide a status report at each meeting of the ARAC held to consider general aviation certification and operations issues.

Participation in the Working Group

The Stall Characteristics Harmonization Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than June 29, 2001. The requests will be reviewed by the co-assistant chairs, the co-assistant executive directors, and the working group co-chairs. Individuals will be advised whether or not their request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and actively participate in the working group (e.g., attend all meetings, provide written comments when requested to do so, etc.). They also will be expected to devote the resources necessary to support the working group in meeting any assigned deadlines. Members are expected to keep their management chain and those they may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with their sponsoring organization's position when the subject

being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the co-assistant chairs, the co-assistant executive directors, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC will be open to the public. Meetings of the Stall Characteristics Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on June 1, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01-14234 Filed 6-5-01; 8:45 am]

BILLING CODE 4410-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; General Aviation Certification and Operations Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee a new task to evaluate changing the requirements in Section 23.177 for demonstrating positive dihedral effect in all land gear and flap positions. This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT: Mike Dahl, Federal Aviation Administration, Central Region Headquarters, 901 Locust, Kansas City, Missouri, 64106, (816) 329-4110. mike.dahl@faa.gov

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. This includes

obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

The Task

1. Review § 23.177 and JAR 23 and recommend harmonized changes to § 23.177 for demonstrating positive dihedral effect in all landing gear and flap positions. (Extending the flaps often decreases the dihedral effect to zero. An aileron rudder interconnect is often installed to correct the problem when dihedral effect in the landing flap configuration is not wanted.)

2. Prepare a draft Notice of Proposed Rulemaking (NPRM) incorporating the recommendations. The NPRM should include the preamble and rule language along with any supporting legal analysis.

Schedule: This task is to be accomplished no later than December 10, 2001.

ARAC Acceptance of Task

ARAC accepted the task and assigned the task to the newly formed Static Directional and Lateral Stability Harmonization Working Group, General Aviation Certification and Operations Issues. The working group will serve as staff to ARAC and assist in the analysis of the assigned task. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA. Recommendations that are received from ARAC will be submitted to the agency's Rulemaking Management Council to address the availability of resources and prioritization.

Working Group Activity

The Static Directional and Lateral Stability Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on general aviation certification and operations issues held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.
3. Draft the appropriate documents and required analyses and/or any other related materials or documents.
4. Provide a status report at each meeting of the ARAC held to consider

general aviation certification and operations issues.

Participation in the Working Group

The Static Directional and Lateral Stability Harmonization Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than June 29, 2001. The requests will be reviewed by the co-assistant chairs, the co-assistant executive directors, and the working group co-chairs. Individuals will be advised whether or not their request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and actively participate in the working group (e.g., attend all meetings, provide written comments when requested to do so, etc.). They also will be expected to devote the resources necessary to support the working group in meeting any assigned deadlines. Members are expected to keep their management chain and those they may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the co-assistant chairs, the co-assistant executive directors, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC will be open to the public. Meetings of the Static Directional and Lateral Stability Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on June 1, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01-14235 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2000-8033]

Agency Information Collection Activities Under OMB Review: OMB Control No. 2126-0010 (Motor Carrier Safety Assistance Program)

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice; request for comments.

SUMMARY: The FMCSA announces that the Information Collection Request (ICR) described in this notice has been sent to the Office of Management and Budget (OMB) for review and approval. The FMCSA is requesting OMB's continued approval of the information that is required for the Motor Carrier Safety Assistance Program. The ICR describes the information collection and its expected cost and burden. The Federal Register notice allowing for a 60-day comment period on this information collection was published on November 1, 2000 (65 FR 65372). We are required to send ICRs to OMB under the Paperwork Reduction Act.

DATES: Please submit comments by July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. James D. McCauley, (202) 366-0133, Office of Safety Programs, Federal Motor Carrier Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection

techniques or other forms of information technology. OMB wants to receive comments within 30 days of publication of this notice in order to act on the ICR quickly.

SUPPLEMENTARY INFORMATION:

Title: Motor Carrier Safety Assistance Program (MCSAP).

OMB Approval Number: 2126-0010.

Background: Sections 401-404 of the Surface Transportation Assistance Act of 1982 (STAA) established a program of financial assistance to States for the purpose of implementing programs to enforce (a) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety; and (b) compatible State rules, regulations, standards, and orders. This grant-in-aid program is known as the Motor Carrier Safety Assistance Program (MCSAP). The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) added programs, such as drug interdiction, traffic enforcement, and size and weight activities to the core program established by the STAA.

The Transportation Equity Act for the 21st Century (TEA-21) further revised the MCSAP by broadening its purpose beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. The TEA-21 required States to develop performance-based plans reflecting national priorities and performance goals, revised the MCSAP funding distribution formula, and created a new incentive funding program. As a result, States are given greater flexibility in designing programs to address national and State goals for reducing the number and severity of commercial motor vehicle (CMV) accidents. The implementing regulations were published in a final rule in the March 21, 2000, **Federal Register** at 65 FR 15092.

In order to qualify for a grant, participating States must submit a Commercial Vehicle Safety Plan (CVSP). After the grant is awarded, States must submit inspection data and quarterly reports explaining work activities and accomplishments. The FMCSA monitors and evaluates a State's progress under its approved CVSP. The agency also determines whether a change in the State's level of effort is required to meet the intended objectives of the CVSP. If a State fails to operate within the guidelines of the approved CVSP or does not remedy any identified deficiencies or incompatibilities in a timely manner, the FMCSA may cease participation in that State's CVSP. This information collection provides the

basis for these responsibilities and decisions.

The quarterly report and inspection data are collected electronically. States continue to submit the CVSP in hard copy. The estimated annual burden for this collection has been significantly reduced due to increased use of information technology.

The FMCSA published the required notice offering a 60-day comment period on the ICR on November 1, 2000 (65 FR 65372). We received two comments, which are addressed in the supporting statement the agency submitted to OMB. Requests for information on the supporting statement should be directed to the Information Contact provided in this Notice.

Respondents: State and local MCSAP lead agencies.

Estimated Total Annual Burden: Grant application preparation: 848 hours; quarterly report preparation: 339 hours; inspection data upload: 7,333 hours. The above figures reflect 20 percent of the total estimated hours to perform the activities listed since MCSAP reimburses up to 80 percent of the eligible costs incurred in the administration of an approved plan as set forth in 49 CFR 350.303, 350.309 and 350.311.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended; and 49 CFR 1.73.

Issued on: May 31, 2001.

Stephen E. Barber,

Acting Deputy Administrator.

[FR Doc. 01-14238 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2001-9561]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice announces the FMCSA's receipt of applications from 22 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before July 6, 2001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987; for information about legal issues related to this notice, Ms. Elaine Walls, Office of the Chief Counsel, (202) 366-1394, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may see all the comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>.

Background

Twenty-two individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemptions will achieve the required level of safety.

Qualifications of Applicants

1. Roger D. Anderson

Mr. Anderson, 62, has amblyopia in his right eye. He has visual acuities of finger counting with his right eye, and 20/20 with his left eye. As the result of an examination in 2000, his optometrist concluded, "Mr. Anderson has been driving like this all of his life and I

believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Anderson reported that he has 45 years and 450,000 miles of experience operating straight trucks; 10 years and 200,000 miles of experience operating tractor-trailer combinations; and 2 years and 18,000 miles of experience operating buses. He holds a Class A CDL from Kansas, and there are no accidents and one conviction for a moving violation—Speeding—in a CMV on his driving record for the last 3 years. He exceeded the speed limit by 13 mph.

2. Joey E. Buice

Mr. Buice, age 30, has a prosthetic right eye due to an injury in 1981. He has uncorrected visual acuity of 20/10 in the left eye. Following an examination in 2001, his ophthalmologist stated, "In my professional opinion his vision is stable and he is capable of driving a commercial vehicle, such as a tractor-trailer without difficulty or risk." Mr. Buice reported that he has driven straight trucks for 6 years and has accumulated 60,000 miles. He holds a Class B CDL from Georgia, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

3. Ronald D. Danberry

Mr. Danberry, 43, has exotropia and amblyopia of the right eye. His corrected and uncorrected visual acuity is 20/60 in the right eye and 20/20 in the left eye. An optometrist who examined him in 2001 stated, "I certify, in my medical opinion, that Ronald has more than sufficient vision to operate a commercial vehicle safely." According to Mr. Danberry's application, he has 3½ years of experience driving straight trucks, totaling 52,000 miles; and 3½ years of experience driving tractor-trailers, totaling 122,000 miles. He holds a Minnesota Class A CDL and has had no accidents or moving violations in a CMV for the past 3 years.

4. Paul W. Dawson

Mr. Dawson, 51, has amblyopia in his left eye, which causes 20/200 best-corrected visual acuity in that eye. In his right eye, his best-corrected visual acuity is 20/20. His optometrist examined him in 2001 and stated, "Our opinion is that Paul has sufficient vision to perform the driving tasks required to operate a commercial vehicle. Indeed he has safely done so for over 20 years!" Mr. Dawson submitted that he has driven 1.9 million miles in tractor-trailer combination vehicles over 20 years. He holds a Class A CDL from

Colorado. His driving record shows no accidents and one conviction for a moving violation—Stopping on Highway—in a CMV for the last 3 years.

5. *Lois E. DeSouza*

Ms. DeSouza, 63, has had decreased vision in her right eye since December, 1995, after attempted repair of a retinal detachment with development of scar tissue. Her visual acuities are light perception in the right eye and 20/30+, with correction, in the left eye. Her ophthalmologist examined her in 2000 and stated, "Ms. DeSouza has been able to perform her tasks in terms of driving this commercial vehicle since her injury to the right eye and I feel that she will have sufficient vision to continue to operate this vehicle safely." Ms. DeSouza reported that she has driven tractor-trailer combinations for 20 years, accumulating 1.2 million miles. She holds a Class A CDL from Tennessee, and she has no accidents or convictions for moving violations in a CMV on her driving record for the past three years.

6. *Richard L. Gandee*

Mr. Gandee, 44, has had central serous retinopathy in his left eye since April 1997. His visual acuity is 20/20 in the right eye and 20/50 in the left eye. Following an examination in 2001, his ophthalmologist certified, "In my medical opinion, I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Gandee reported he has driven tractor-trailer combinations for 15 years, accumulating 975,000 miles, and straight trucks for 5 years, accumulating 650,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows he has had one accident and no convictions for moving violations in a CMV. According to the police report for the accident, the driver of another vehicle coming toward him crossed the center line and struck the vehicle Mr. Gandee was driving. The other driver was charged with "Failure to Control."

7. *Steven A. Garrity*

Mr. Garrity, 38, has a visual acuity in the right eye of 20/20 and in the left eye hand motion due to a retinal detachment in 1978. Mr. Garrity was examined in 2000 and his optometrist stated, "It is my opinion that Steve has sufficient vision to operate a commercial vehicle due to the fact that he is 20/20 in the right eye and his peripheral vision is very good." Mr. Garrity submitted that he has driven straight trucks for 20 years, accumulating 300,000 miles, and tractor-trailer combinations for 18 years,

accumulating 270,000 miles. He holds a Massachusetts Class AM CDL, and his driving record for the last 3 years contains no accidents or convictions for moving violations in a CMV.

8. *Chester L. Gray*

Mr. Gray, 28, has amblyopia in his left eye. His best-corrected visual acuity is 20/15 in the right eye and 20/50 in the left eye. As a result of a 2001 examination, his optometrist affirmed, "In my opinion, his vision is good enough to permit him to safely operate a commercial motor vehicle." Mr. Gray reported that he has driven tractor-trailer combination vehicles and straight trucks for 9 years, accumulating 360,000 miles in the former and 45,000 miles in the latter. He holds a Class A CDL from Texas, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

9. *Waylon E. Hall*

Mr. Hall, 33, has amblyopia in his left eye. He sees 20/300 not correctable with his left eye and 20/20 corrected with his right eye. An optometrist examined him in 2001 and stated, "I feel Mr. Hall would be capable of performing all driving tasks associated with the operation of a commercial vehicle." Mr. Hall reported he has driven tractor-trailer combinations 3 years, accumulating 405,000 miles. He holds a Louisiana Class E regular license currently, but held a Class A CDL for the 3-year period prior to his date of application. He has had no CMV accidents or convictions for moving violations for the past 3 years, according to his driving record.

10. *Jeffery M. Kimsey*

Mr. Kimsey, 34, has a loss of central vision in his right eye due to an injury in 1986. His visual acuity in the right eye is finger counting at 3 feet, and in the left eye, 20/20, best-corrected. An optometrist examined him in 2001 and stated, "It is my opinion that this patient has sufficient vision to operate a commercial vehicle." According to Mr. Kimsey's application, he has driven 192,000 miles in tractor-trailer combination vehicles over 16 years. He holds a Class A CDL from Georgia. In the last 3 years he has had no accidents and one conviction for a moving violation—Speeding—in a CMV on his driving record. He exceeded the speed limit by 13 mph.

11. *Gerald L. Phelps*

Mr. Phelps, 53, is blind in his right eye due to an injury at 4 years of age. His visual acuity is 20/20 in the left eye.

His optometrist examined him in 2001 and certified, "In my medical opinion, Gerald is a safe driver and has sufficient vision to perform tasks required of a truck driver in a commercial environment." In his application, Mr. Phelps reported that he has driven tractor-trailer combinations for 35 years, accumulating 1.4 million miles. He holds a Pennsylvania Class AM CDL, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

12. *Doyle E. Ramsey*

Mr. Ramsey, 58, has amblyopia in his left eye. His corrected visual acuity in the right eye is 20/20, and in the left eye, 20/60⁻¹. An optometrist examined him in 2001 and affirmed, "In my medical/optical opinion I feel Mr. Ramsey has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ramsey stated he has driven straight trucks for 12 years, accumulating 624,000 miles. He holds an Indiana chauffeur's license, and his official driving record for the last 3 years shows no accidents and no convictions for moving violations in a CMV.

13. *Michael J. Risch*

Mr. Risch, 49, has an amblyopic right eye, which has only counting finger vision. His left eye has vision of 20/20-2. Following an examination in 2000, his ophthalmologist certified, "After examination, it is my medical opinion that Mr. Risch has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to his application, Mr. Risch has operated tractor-trailer combinations for 25 years and 2.7 million miles. He holds a Class ABCD CDL from Wisconsin, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

14. *Tim M. Seavy*

Mr. Seavy, 32, has amblyopia in his right eye. His best-corrected visual acuity is 20/200 in the right eye and 20/20 in the left eye. His ophthalmologist examined him in 2000 and affirmed, "Visual deficiency is stable and visual fields are over 120 degrees. I feel that the vision is sufficient for driving tasks required for operating a commercial vehicle." Mr. Seavy stated he has driven tractor-trailer combination vehicles for 4 years, accumulating 561,000 miles, and straight trucks for 7 years, accumulating 728,000 miles. He holds an Indiana Class A CDL, and he has no accidents

or convictions for moving violations on his driving record for the last 3 years.

15. Kim L. Seibel

Mr. Seibel, 49, has amblyopia in his left eye. He has best-corrected visual acuity of 20/20 in the right eye and 20/100+ in the left eye. As a result of an examination in 2001, his optometrist stated, "In my opinion Kim has sufficient vision to perform the driving task required to operate a commercial vehicle." According to Mr. Seibel's application, he has driven tractor-trailer combinations for 25 years, accumulating 2.5 million miles. He holds a Class A CDL from South Dakota, and his driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

16. Edd J. Stabler

Mr. Stabler, 53, is aphakic in the left eye due to an eye injury in 1961. His right eye corrects to 20/20 and the left eye perceives hand motion only. His optometrist examined him in 2000 and certified, "Mr. Stabler has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Stabler reported he has driven tractor-trailer combinations for 13 years, accumulating 1.2 million miles, and straight trucks for 9 years, accumulating 702,000 miles. He holds an Alabama Class AM CDL, and in the last 3 years, he has had no accidents or convictions for moving violations in a CMV.

17. Randy D. Stanley

Mr. Stanley, 43, has amblyopia in his left eye. His vision in the right eye is 20/20 and in the left eye 20/80, best-corrected. Following a 2001 examination, his optometrist stated, "It is my medical opinion that Mr. Stanley has sufficient vision to perform the driving tasks required to operate a commercial vehicle." In his application, Mr. Stanley reported that he has driven tractor-trailer combinations and straight trucks for 21 years, accumulating 420,000 miles in the former and 10,000 miles in the latter. He holds a North Carolina Class A CDL, and has had no accidents or convictions for moving violations in a CMV for the past 3 years, according to his driving record.

18. Lee T. Taylor

Mr. Taylor, 42, has worn a prosthetic right eye for 35 years, due to an injury. Visual acuity in his left eye is 20/20 with correction. His ophthalmologist examined him in 2000 and stated, "My medical opinion based on ophthalmologic findings is that Mr. Taylor should be permitted to operate commercial motor vehicles." Mr. Taylor

submitted that he has driven tractor-trailer combinations for 7 years, traveling 766,000 miles, and straight trucks for 6 years, traveling 262,000 miles. He holds a Class A license from Florida, and his driving record for the last 3 years shows no accidents and one conviction for a moving violation—Unlawful Speed—in a CMV. He exceeded the speed limit by 9 mph.

19. James Melvin Tayman, Sr.

Mr. Tayman, 63, sustained an injury to the left eye approximately 40 years ago and has been blind in that eye ever since. His right eye has visual acuity of 20/20, with correction. Following an examination in 2001, his ophthalmologist stated, "In addition to his excellent visual function in the right eye, Mr. Tayman has a record of driving 400 miles per day professionally, since 1963, with no accidents. He is fully able to operate a commercial vehicle, and is likely a safer driver than most who pass through your office." Mr. Tayman submitted that he has driven tractor-trailer combination vehicles for 23 years accumulating 1.8 million miles, and straight trucks for 19 years accumulating 1.5 million miles. He holds a Class A CDL from Maryland, and his driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

20. Wesley E. Turner

Mr. Turner, 41, has an aphakic, amblyopic left eye due to trauma at age 6. His vision in the right eye is 20/20 without correction, and in the left eye 20/800 not correctable. He was examined in 2001 and his ophthalmologist stated, "Since his vision is stable, visual field is normal and Mr. Turner has driven professionally in the past, I see no reason he could not operate a commercial vehicle now." In his application, Mr. Turner reported that he has driven tractor-trailer combinations for 18 years, accumulating 1.3 million miles, and straight trucks for 2 years, accumulating 50,000 miles. He holds a Texas Class A CDL, and has no accidents or convictions for moving violations in a CMV on his driving record for the past 3 years.

21. Edward W. Yeates, Jr.

Mr. Yeates, 33, has amblyopia in the right eye. His best vision with correction is 20/80 in the right eye and 20/20 in the left eye. Following an examination in 2000, his ophthalmologist certified, "Since this condition has been present for the patient's entire life he should have no difficulty judging distance and his peripheral vision is entirely normal.

I feel that he can safely operate a commercial vehicle." Mr. Yeates submitted that he has driven tractor-trailer combinations and straight trucks for 9 years, accumulating 720,000 miles in the former and 288,000 miles in the latter. He holds a Mississippi Class A CDL, and his driving record for the last 3 years shows no accidents and no convictions for moving violations in a CMV.

22. John C. Young

Mr. Young, 44, has amblyopia in the right eye. His visual acuity is 20/60 in the right eye and 20/15 in the left eye. Following a 2000 examination, his ophthalmologist noted, "In my opinion, Mr. Young has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to Mr. Young, he has operated tractor-trailer combinations for 20 years, accumulating 1.5 million miles. A holder of a Class AM CDL from Virginia, he has had no accidents or citations for moving violations in a CMV for the last 3 years.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FMCSA may publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: May 31, 2001.

Stephen E. Barber,

Acting Deputy Administrator.

[FR Doc. 01-14239 Filed 6-5-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****Discretionary Grants To Support a Teen Safe Driving Initiative**

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

ACTION: Announcement of discretionary grants to increase seat belt use and decrease impaired driving and speeding among the teen population.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary grant program to provide funding to four communities to support the demonstration of teen safe driving initiatives. This notice solicits pre-applications from public and private, non-profit and for-profit organizations, state and local governments and their agencies. Interested applicants must submit a pre-application package as further described in the Pre-Application Procedures section of this notice. The pre-applications will be evaluated to identify those that warrant further development. Only selected pre-applicants will be invited to submit a full application. For these four demonstration programs, NHTSA desires a mix of rural, suburban and urban areas, as well as diverse populations.

DATES: Pre-applications must be received by the office designated below on or before 2 p.m. on Tuesday, July 3, 2001.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), Attn: Henrietta R. Mosley, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Program No. DTNH22-01-G-05218.

FURTHER INFORMATION CONTACT: General administrative questions may be directed to Henrietta R. Mosley, Office of Contracts and Procurement by e-mail at hmosley@nhtsa.dot.gov, or by phone at (202) 366-9570. Programmatic questions relating to this grant program should be directed to Ed Pacchetti, Occupant Protection Division (NTS-12), NHTSA, 400 7th Street, SW., Room 5118, Washington, DC 20590, by e-mail at epacchetti@nhtsa.dot.gov, or by phone at (202) 366-2708. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:**Background**

Motor vehicle crashes are the leading cause of death for youth (youth and teen will be used interchangeably to describe persons 15-20 years old throughout the document). In 1999, 64 percent of young people killed or injured were not wearing seat belts. In addition, alcohol contributes to non-belt use. Seventy-three percent of young drivers who had been drinking and were killed were not wearing seat belts. The combination of non-belt use, impaired driving and speed is a deadly combination for all drivers, but especially America's teens. In 1999, a total of 8,175 15 to 20-year-old drivers were involved in crashes in which there was a fatality. In these crashes, 3,561 of the drivers were killed and an additional 362,000 were injured. Compared with fatality rates for drivers 25 through 69 years old, the rate for teenage drivers (16 to 19 years old) is about four times greater (Traffic Safety Facts, NHTSA, 1999).

The magnitude of risky teen driver behaviors is reflected in an annual cost to society of \$32 billion. The factors that contribute to the startling fatality and injury statistics for teens are lack of driving experience, immaturity, high risk-taking behavior, and the feeling of invincibility.

There are three primary strategies for reducing the incidence of motor vehicle-related deaths and injuries for this age group. The first strategy is to increase the use of seat belts. Seat belts save lives, yet nationwide, only 71 percent of Americans take advantage of these life-saving devices. For those at age 18, seat belt use is far below the national average. For those in the 16-20 year old age group, 64 percent of those killed or injured in traffic crashes were not wearing seat belts.

The second strategy is to decrease the number of youth who drive impaired. An estimated 2,210 (35.8 percent) of youth ages 15-20 died in alcohol-related crashes. The severity of a crash increases with alcohol/drug involvement. In 1998, 2 percent of the 15 to 20-year old drivers involved in property damage-only crashes had been drinking, 3 percent of those crashes resulting in injury had been drinking, and 21 percent of those involved in fatal crashes had been drinking.

The third strategy for reducing motor vehicle fatalities and injuries for youth is reducing the speed at which they drive. Approximately 30 percent of 15-20 year old drivers involved in fatal crashes were speeding. Speeding reduces a driver's ability to steer safely around curves or objects in the roadway,

extends the distance necessary to stop a vehicle, and increases the distance a vehicle travels while the driver reacts to a dangerous situation. In addition, speeding causes more serious damage and injury when crashes occur.

To address the high fatality rate among youth 15-20 years of age, NHTSA is announcing the availability of funds to develop and enhance community-based programs. The aim of these demonstration grants is to increase seat belt use, and reduce speeding, underage drinking and impaired driving among the 15-20 year old youth population.

Objective of This Grant Program

The objective of this grant program is to increase seat belt use and reduce the incidence of impaired driving, underage drinking and speeding among youth populations. This grant will support the implementation of new programs that build upon strategies known to be effective in accomplishing these goals.

Examples of Effective Strategies

NHTSA recognizes that highly visible enforcement is an important foundation upon which any effective program must be based. The agency also acknowledges the need to develop original and resourceful ways to get the enforcement message out to teens. An extensive review of innovative programs targeting teens show a relationship between raising traffic safety awareness among teens and safer driving habits and occupant protection behaviors.

A primary way to promote awareness of unsafe driving habits is through enforcement. Recognizing this, to be considered for award of funds under this program, the central component of the applicant's project plan must be strict enforcement of existing laws. The enforcement component must be supported by a public information/education component geared to promoting awareness of the enforcement activities, as well as emphasizing the need for enforcement to generate positive traffic safety habits. The education campaign must utilize members of youth organizations, because we know that some of the most effective education for this age group is delivered by their peers. The education campaign needs to empower youth to be part of the process, not just a target for enforcement. Youth can be utilized to support enforcement efforts that will save other youth from death or injury.

An application may propose to implement its enforcement efforts in a number of ways. For example, in the metro Atlanta area, tying data to increased enforcement has been the key.

The Atlanta Journal Constitution reports that it takes deaths to get people's attention when it comes to driving. In the fall of 2000, they reported that 71 metro Atlantans age 15 through 20 were lost in traffic crashes B including 36 drivers B in just the first eight months of 2000. Data like that put teen driving back on the public agenda. Publicizing data like this, as well as publicizing and funding an increased enforcement effort, can be a winning combination for a community that wants to have a positive effect on teen driving safety.

To support and publicize the enforcement effort, a community based team made up of members representing all disciplines of the community, including traffic safety advocates, employers, prosecutors and judges, educators, business and health care professionals, must be formed if one doesn't already exist. The message of teen driving safety cannot be repeated too often, by too many people. Driving safely will only become a habit for teens when they are fully aware of the consequences of their risk taking behavior. These consequences should be clearly defined as getting a ticket, or being involved in a traffic crash that could result in injury or death. An aggressive community-wide media campaign that emphasizes the enforcement message will help to get this point across to our youngest drivers.

Evaluation of Programs

Meaningful and timely evaluations of each recipient's program, management, and associated resources are very important to improving programs in subsequent years. Grantees and NHTSA need to conduct baseline seat belt use surveys before, during and after the program. In addition, data needs to be collected on the number of citations written to teens for traffic safety violations and the number of enforcement activities. A final evaluation measure will be teen fatalities and injuries that involve impaired driving and/or speed and non-belt use at the beginning of the program, and after the program has been completed. The observed difference in seat belt use, and the difference in the number of fatalities caused by non-belt use, impaired driving and speeding will provide additional measures of program effectiveness.

NHTSA Involvement

In support of the activities undertaken by this grant program, NHTSA will:

1. Provide a Contracting Officer's Technical Representative (COTR) to coordinate activities between the

Grantee and NHTSA during grant performance, and to serve as a liaison between NHTSA Headquarters, NHTSA Regional offices and the grantee.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

Availability of Funds and Period of Support

A total of \$500,000 will be provided in FY2001 and \$500,000 will be provided in FY2002, subject to available appropriations, to fund a total of four communities at \$250,000 each. Each program will be split-funded for an amount of \$125,000 per 12-month period. The period of support for a grant under this program will be a total of 24 months, with 21 months of planning and implementation, and three months for evaluation and preparation of the final report. NHTSA estimates that the award of the four FY2001 Occupant Protection, Impaired Driving, and Speed Teen Initiative Grants will occur by September 30, 2001.

Allowable Uses of Federal Funds

Allowable uses of Federal funds shall be governed by the applicable federal cost principles. Funds provided under this grant program shall be used to carry out the activities described in the Applicant's plan for which the grant is awarded. At least 75 percent must be spent on enforcement activities which may include salary for a coordinator and publicizing enforcement activities and, of that 75 percent, a maximum of 15 percent of funds may be used for the purchase of equipment to assist law enforcement agencies in carrying out enforcement activities.

Because the primary component of the grant is enforcement, the applicant must be able to provide financial support to law enforcement agencies that have jurisdiction within the community or county. This would include local police, sheriff's offices, and State police/highway patrol that have jurisdiction within the geographical area targeted under the scope of the grant. If training is provided to law enforcement personnel for conducting Standardized Field Sobriety Tests or Drug Recognition Expert training, the NHTSA/International Association of Chiefs of Police (IACP) curricula must be used.

Eligibility Requirements

Public and private entities, non-profit and for-profit organizations, state and local governments and their agencies may apply. The applicant must be in a state that has a zero tolerance law. In

addition, the community must have a total population of between 100,000 and 250,000 people based upon Census 2000 data of the U.S. Census Bureau.

Pre-Application Procedures

Each applicant must submit one original and two copies of the pre-application package to: NHTSA, Office of Contracts and Procurement (NAD-30), Attn: Henrietta R. Mosley, 400 7th Street, SW., Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required. The pre-application may be single spaced, must be typed on one side of the page only, and must include a reference to NHTSA Grant Program No. DTNH22-01-G-05218. Only complete pre-application packages received on or before 2 p.m. on Tuesday, July 3, 2001 will be considered.

Pre-Application Package Contents

1. The pre-application package must be submitted with the completed cover page of the Application for Federal Assistance (Standard Form 424—Rev. 7-97). The Standard Form 424 can be found on the OMB website at <http://www.whitehouse.gov/omb/grants/index/html>.

2. The pre-application package must also include the following:

(a) A copy of the applicable zero tolerance law and implied consent statute for the state, as well as an explanation of their compatibility in enforcing the laws.

(b) A maximum 4-page project description that includes: a brief introduction of the community demographics that identifies the total population and the incidence of youth fatalities and injuries as a result of traffic crashes, as well as any past enforcement or educational programs that have targeted teens; and a description of the proposed community enforcement project designed to increase seat belt use, and decrease impaired driving and speeding among the teen population.

(c) A 1-page summary that identifies the availability and location of the following data for the target community of youth at the outset and throughout the performance of the project: Motor vehicle fatalities and injuries; the incidence of alcohol use, seat-belt non-use and speeding in motor vehicle crashes; and citation data for non-use of seat belts, zero tolerance laws, speeding, underage drinking and impaired driving. It is not necessary to provide these data for the pre-application, only to ensure its availability.

(d) A 1-page staffing description that identifies the project management capability and the various personnel disciplines proposed.

(e) A 1-page budget summary. At least 75 percent must be spent on enforcement activities which may include salary for a coordinator and publicizing enforcement activities and, of that 75 percent, a maximum of 15 percent of funds may be used for the purchase of equipment to assist law enforcement agencies in carrying out enforcement activities. The budget summary must identify the level of effort proposed for the professional, technical and support staff, including fringe benefits and other labor overhead; any proposed equipment, training, or travel; and proposed other direct and indirect costs.

Project Review Procedures and Criteria

Pre-applications, once received, will be screened to ensure that they meet the eligibility requirements. Pre-applications meeting the requirements will be reviewed by a panel using the criteria outlined below.

1. *Project Approach:* The overall soundness and feasibility of the community enforcement project and the potential effectiveness of the activities described for increasing seat belt use, and decreasing impaired driving, speeding and underage drinking among the target youth population. The extent to which the project describes a significant combined enforcement component that addresses non-use of seat belts, and the incidence of impaired driving, speeding and violating the zero tolerance law.

2. *Data Availability:* Documentation supporting the current and continued availability of the identified data which must be collected to evaluate and measure the effectiveness of the project.

3. *Organizational Resources:* The organizational resources demonstrate effective project management capability and personnel expertise to successfully perform the activities that will result in increased belt use, and decreased speeding and impaired driving among the teen population. The relative level of effort for the professional, technical, and support staff as identified in the budget summary will be considered.

Each pre-application will be reviewed and rated in accordance with the evaluation criteria outlined above. Those applicants whose pre-applications are not selected will be informed in writing. Those applicants whose pre-applications are selected for further development will also be notified in writing and a date for submitting full applications will be set.

More than four pre-applications will be selected for further development. During this second phase, full application proposals will be reviewed by panel members who were involved in the review of the pre-applications. Negotiations will then take place in connection with the full application. It is anticipated that awards will be made by September 30, 2001.

Final Application Procedures

If a pre-application is chosen for the further development, the applicant must submit one original and two copies of the full application package to: NHTSA, Office of Contracts and Procurement (NAD-30), Attn: Henrietta Mosley, 400 7th Street, SW., Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Grant Program No. DTNH22-01-G-05218. Only complete application packages will be considered.

Final Application Contents

The applicant must include in its application all of the contents listed below:

1. The application package must be submitted with OMB Standard Form 424, (Rev. 7-97, including 424A and 424B), Application for Federal Assistance, with the required information provided and the certified assurances included. While the Form 424-A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed total project effort, including evaluation and reporting, (direct labor, including labor category, level of effort, and rate; direct materials, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontracts/subgrants, with similar detail, if known; and overhead) and costs the applicant proposes to contribute or obtain from other sources in support of the projects in the plan.

2. All applications shall include a plan detailing projects to increase enforcement and public information/education targeting youth populations to reduce the number and rate of fatalities within this population. The plan must provide the following information:

a. An Introduction section with a brief general description of the population density, any unique population characteristics, and the most current year's data for the following information:

- Motor vehicle fatalities and injuries for the target community of youth,
- The incidence of alcohol use, seat belt non-use and speeding in motor vehicle crashes,
- Citation data for non-use of seat belts, zero tolerance laws, speeding, underage drinking and impaired driving. Providing the data broken down by age, so that youth can be a focus, is preferred.

b. A Discussion section that presents the principal goals and objectives of the proposed plan and articulates the potential to reduce speeding, impaired driving and an increase in seat belt use rates within a youth population, with supporting rationale. This section must also identify any proposed partnerships, coalitions, or leveraging of resources that will be employed as a means to implement a comprehensive enforcement and public information/education activities. Letters of support of community partners such as citizen activists, educators, business owners, the judicial branch of government, public health personnel, and other public and private sector partners should be included. Documentation of existing public and/or political support must be included (e.g. endorsement of applicable law enforcement agencies, State Association of Chiefs of Police, Community Medical Society, etc). In addition, a letter demonstrating support and coordination of state plans must be provided by the State Highway Safety Office. Any known barriers to implementation of the applicant's plan should be identified, with a discussion of how such barriers will be overcome.

c. A Project Description section, with a detailed description of the activities to be implemented by the applicant under the plan, including, for each activity:

(1) The key strategies to be employed to achieve a significant increase in belt use and decrease in speeding and impaired driving;

(2) The features (e.g. new participants, expanded efforts, unique resources, design or technological innovations, reductions in cost or time, integration with existing community efforts, extraordinary community involvement); and

(3) A work plan listing milestones, in chronological order, to show the schedule of expected accomplishments and their target dates.

For example, in a work plan based on a comprehensive program with

community-wide participation, the applicant should provide the following information:

- The number of law enforcement agencies that are expected to participate. Favorable consideration will be given to an applicant that can demonstrate full support and participation from law enforcement,
- The kinds of law enforcement activities and strategies that will take place (e.g., checkpoints, saturation patrols, foot patrols at selected intersections, etc.),
- The number of officers that will participate,
- The percentage of these contacts with teens, on average, that are expected to result in a citation for a seat belt or impaired driving/speeding violation,
- The full extent that other community partners will be involved,
- Efforts to reduce underage drinking,
- Demonstration of coordination with prosecutors and judges processing juvenile cases.

d. A Personnel section, which identifies the proposed program manager, key personnel and other proposed personnel considered critical to the successful accomplishment of the activities under the applicant's plan. A brief description of their qualifications and respective responsibilities shall be included. The proposed level of their effort and contributions to the various activities in the plan shall also be identified. Each organization, corporation, or consultant who will work on the project shall be identified, along with a short description of the nature of the effort or contribution and relevant experience.

e. An Evaluation section, with a description of how the applicant will evaluate and measure the outcomes of the activities in its project plan. It is critically important that the programs funded as a result of this announcement be carefully evaluated so that others may learn the relative strengths and weaknesses of the strategies and approaches undertaken and what effects they have on seat belt use rates, and the incidence of impaired driving, underage drinking and speeding. The evaluation section shall describe the methods for assessing actual results achieved under the plan. Outcomes can be documented in a number of ways. Increases in observed seat belt use and reductions in motor vehicle crash fatalities and injuries provide the ultimate measure of success. However, intermediate measures, like changes in enforcement policies and procedures, as well as increases in citations for underage drinking, impaired driving, speeding and non-seat belt use may be utilized to

measure progress. Favorable consideration will be given to applications that can demonstrate a pre-implementation measurement system through which a baseline can be determined, and following program implementation, a quantitative evaluation of effects can be ascertained.

In particular, the application should describe how it intends to assess the effectiveness of its project with respect to:

- Seat belt use rates,
- Level of actual citations and other enforcement activities,
- Activity to generate support for enforcement,
- Reducing the incidence of speeding among teens,
- Reducing the incidence of impaired driving among teens,
- Increase public awareness of other enforcement efforts,
- Public support for teen traffic safety enforcement,
- Encouraging specific enforcement-related media efforts,
- Increasing the awareness of the dangers of impaired driving, speeding and not buckling up,
- Impact on youth offenses/citations adjudicated by the court system.

Applications will be evaluated based on criteria that will be distributed when applications are requested. However, the criteria will be very similar to those used to evaluate the pre-applications.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

a. Quarterly Progress Reports should include a summary of the previous quarter's activities and accomplishments, significant problems encountered or anticipated, a brief itemization of expenditures made during the quarter, and proposed activities for the upcoming quarter. Press clips and highlights from activities should be included in each quarterly report. Any decisions and actions required in the upcoming quarter should also be in the report.

b. Draft Final Report: The grantee shall prepare a draft Final Report that includes a complete description of the overall project implementation, including a project time-line; the

activities conducted, including partners; data collection efforts; evaluation methodology; and findings from the program evaluation. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The report should provide information that will be helpful in assembling a "Best Practices" guide for use by other communities. The grantee shall submit the draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

c. Final Report: The grantee shall revise the draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR 15 days before the end of the performance period. For the final report, the Grantee shall supply the COTR:

- A camera ready version of the document as printed.
- A copy, on appropriate media (diskette, Syquest disk, etc.), of the document in the original program format that was used for the printing process.

Note: Some documents require several different original program languages (e.g., PageMaker was the program format for the general layout and design and Power Point was used for charts and yet another was used for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, Power Point files should be clearly identified by both a descriptive name and file name (e.g., 1994 Fatalities—chart1.ppt).

- A complete version of the assembled document in portable document format (PDF) for placement of the report on the world wide web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document in the PDF format that will actually be placed on the WWW. The document would be completely assembled with all colors, charts, side bars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 diskette (for small documents) or on any appropriate archival media (for large documents) such as a CD ROM, TR-1 Mini cartridge, Syquest disk, etc.
- Four additional hard copies of the final document.

d. The Grantee will be expected to provide a presentation of the program results in Washington, DC.

3. During the effective performance period of grants awarded as a result of

this announcement, the grant shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued on: May 31, 2001.

Marilena Amoni,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 01-14173 Filed 6-5-01; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34032]

Canadian Pacific Railway Company— Trackage Rights Exemption— Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to Canadian Pacific Railway Company (CPR) over its Michigan Line between the Conrail/Detroit River Tunnel Partnership property line at the west portal of the Detroit River Tunnel at milepost 2.02 and the Conrail/CSX Transportation, Inc. (CSXT) property line at the new connection between Conrail's Michigan Line and CSXT's Detroit Subdivision at milepost 5.50+/- of Conrail's Michigan Line, a distance of approximately 3.48 miles.¹

The transaction was scheduled to be consummated on or shortly after May 24, 2001.

The purpose of this trackage rights is to allow CPR to utilize a new connection being built between Conrail's Michigan Line at milepost 5.50+/- and CSXT's line of railroad known as the Detroit Subdivision, at milepost CH-7.5+/-, located entirely within the City of Detroit, MI.²

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or

misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34032, 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, a copy of each pleading must be served on Diane P. Gerth, LEONARD, STREET AND DEINARD, 150 South Fifth Street, Minneapolis, MN 55402.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 29, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 01-13953 Filed 6-5-01; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34036 (Sub-No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34036¹ to permit the trackage rights to expire on August 8, 2001, in accordance with the agreement of the parties.

DATES: This exemption is effective on July 6, 2001.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance

¹ On April 24, 2001, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company over UP's rail line on the Black Butte and Valley Subdivisions between Klamath Falls, OR, in the vicinity of UP's milepost 428.7 and Binney Junction (Marysville), CA, in the vicinity of UP's milepost 141.9, a distance of 285 miles. See *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34036 (STB served May 10, 2001). The trackage rights operations under the exemption became effective and were scheduled to be consummated on May 1, 2001.

Docket No. 34036 (Sub-No. 1) 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, a copy of all pleadings must be served on petitioners' representatives (1) Yolanda Grimes Brown, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161-0039, and (2) Robert Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar (202) 565-1600. [TDD for the hearing impaired 1-800-877-8339.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā-To-Dā Office Solutions, Suite 210, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293-7776. [Assistance for the hearing impaired is available through TDD services 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 30, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,
Secretary.

[FR Doc. 01-14087 Filed 6-5-01; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") called for the submission of Large Position Reports by those entities whose reportable positions in the 4% Treasury Notes of April 2003 equaled or exceeded \$2 billion as of close of business May 25, 2001.

DATES: Large Position Reports must be received before noon Eastern time on June 8, 2001.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Securities Reports Division, 4th Floor, 33 Liberty Street, New York, New York 10045; or faxed to 212-720-5030.

¹ A redacted version of the trackage rights agreement between CPR and Conrail was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on May 29, 2001.

² This transaction is related to the verified notice of exemption filed with the Board on May 17, 2001, STB Finance Docket No. 34033, *Canadian Pacific Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.*

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Executive Director; Lee Grandy, Associate Director; or Nadir Isfahani, Government Securities Specialist; Bureau of the Public Debt, Department of the Treasury, at 202-691-3632.

SUPPLEMENTARY INFORMATION: Pursuant to the Department's large position rules under the Government Securities Act regulations (17 CFR part 420), the Treasury, in a press release issued on June 4, 2001, and in this **Federal Register** notice, called for Large Position Reports from those entities whose reportable positions in the 4% Treasury Notes of April 2003, Series P-2003, equaled or exceeded \$2 billion as of the close of business Friday, May 25, 2001. This call for Large Position Reports is a test. Entities whose reportable positions in this note equaled or exceeded the \$2 billion threshold must report these positions to the Federal Reserve Bank of New York. Entities with positions in this note below \$2 billion are not required to file Large Position Reports. Large Position Reports, which must include the required position and administrative information, must be received by the Securities Reports Division of the Federal Reserve Bank of New York before noon Eastern time on Friday, June 8, 2001. The Reports may be filed by facsimile at (212) 720-5030 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 4% Treasury Notes of April 2003 have a CUSIP number of 912827 6W 7, a STRIPS principal component CUSIP number of 912820 GF 8, and a maturity date of April 30, 2003.

The press release and a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17

CFR part 420, can be obtained by calling (202) 622-2040 and requesting document number 405. These documents are also available at the Bureau of the Public Debt's Internet site at the following address: www.publicdebt.treas.gov.

Questions about Treasury's large position reporting rules should be directed to Public Debt's Government Securities Regulations Staff at (202) 691-3632. Questions regarding the method of submission of Large Position Reports may be directed to the Securities Reports Division of the Federal Reserve Bank of New York at (212) 720-1449.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1535-0089.

Dated: June 1, 2001.

Donald V. Hammond,
Acting Under Secretary, Domestic Finance.
[FR Doc. 01-14337 Filed 6-4-01; 2:33 pm]
BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01 -43]

Customs Approval of Q & Q Control Service Americas Incorporated as a Commercial Gauger

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Accreditation of Q & Q Control Service Americas Inc. of Houston, Texas, as a commercial gauger.

SUMMARY: Q & Q Control Service Americas Inc. of Houston, Texas, has applied to U.S. Customs under § 151.13 of the Customs Regulations for approval as a commercial gauger to gauge petroleum product, animal and vegetable oils, and organic compounds. Customs has determined that this company meets all of the requirements for approval as a commercial gauger. Specifically, Q & Q Control Service Americas Inc. has been granted approval to gauge petroleum product under Chapter 27 and Chapter 29, animal and vegetable oils under Chapter 15 and organic compounds under Chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Therefore, in accordance with § 151.13 of the Customs Regulations, Q & Q Control Service Americas Inc. of Houston, Texas, is hereby approved to gauge the products named above.

Location: Q & Q Control Service Americas Inc. approved site is located at: 16514 A Dezavala Road, Houston (Channelview), Texas, 77530.

EFFECTIVE DATE: June 1, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Parker, National Quality Manager, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Suite 1500 North, Washington, DC 20229, (202) 927-1060.

Dated: May 31, 2001.

Ira S. Reese,
Executive Director, Laboratories and Scientific Services.
[FR Doc. 01-14177 Filed 6-5-01; 8:45 am]
BILLING CODE 4820-20-P



Federal Register

**Wednesday,
June 6, 2001**

Part II

United States Sentencing Commission

**Sentencing Guidelines for United States
Courts; Notice**

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of: (A) promulgation of temporary, emergency amendments, effective May 1, 2001, for (1) offenses involving the manufacture, importation, exportation, or trafficking of "Ecstasy"; (2) offenses involving the manufacture, importation, or trafficking of amphetamine; (3) offenses involving the trafficking of certain List I chemicals that are used in the manufacture of methamphetamine; and (4) offenses involving peonage and human trafficking; and (B) submission to Congress of additional non-emergency amendments to the sentencing guidelines, effective November 1, 2001.

SUMMARY: The United States Sentencing Commission hereby gives notice of the following actions:

(A) Emergency Amendments.—

(1) "Ecstasy" Offenses.—Pursuant to section 3664 of the Ecstasy Anti-Proliferation Act of 2000, Pub. L. 106—310, the Commission has promulgated a temporary, emergency amendment to § 2D1.1.

(2) Amphetamine Offenses.—Pursuant to section 3611 of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106—310, the Commission has promulgated a temporary, emergency amendment to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses) Attempt and Conspiracy).

(3) List I Chemical Offenses.—Pursuant to section 3651 of the Methamphetamine Anti-Proliferation Act of 2000, the Commission has promulgated a temporary, emergency amendment to §§ 2D1.1 and 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy).

(4) Human Trafficking Offenses.—Pursuant to section 112(b) of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106—386, the Commission has promulgated a temporary, emergency amendment to §§ 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct), 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), and

2H4.1 (Peonage, Involuntary Servitude, and Slave Trade), and has promulgated a new guideline at § 2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act).

(B) Non-Emergency Amendments—Pursuant to its authority under 28 U.S.C. 994(a) and (p) and several congressional directives more fully described herein, the Commission has promulgated additional, non-emergency amendments to the sentencing guidelines, policy statements, commentary, and statutory index.

This notice sets forth the amendments and the season for each amendment.

DATES: The Commission has specified an effective date of May 1, 2001, for the emergency amendments set forth in Part (A) of this notice and an effective date of November 1, 2001, for the non-emergency amendments set forth in Part (B) of this notice.

FOR FURTHER INFORMATION CONTACT:

Michael Courlander, Public Affairs Officer, 202–502–4590. The amendments set forth in this notice also may be accessed through the Commission's website at www.ussc.gov.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guidelines amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

(A) Emergency Amendments.—In January 2001, the Commission published options for promulgating the emergency amendments set forth herein (*see* 66 FR 7962, January 26, 2001). The Commission held a public hearing on the proposed amendments in Washington, DC, on March 19, 2001. After a review of hearing testimony and additional public comment, the Commission promulgated the emergency amendments set forth herein. The Commission specified an effective date of May 1, 2001, for these amendments.

(1) "Ecstasy".—The Ecstasy Anti-Proliferation Act of 2000 instructed the Commission to provide increased penalties for the manufacture, importation, exportation, or trafficking of "Ecstasy". The directive specifically required the Commission to increase the base offense level for 3,4-Methylenedioxymethamphetamine

(MDMA), 3,4-Methylenedioxyamphetamine (MDA), 3,4-Methylenedioxy-N-ethylamphetamine (MDEA), and Paramethoxymethamphetamine (PMA). The amendment amends the Drug Equivalency Tables in 1A2D1.1 to increase substantially the marijuana equivalencies for the specified controlled substances, which has the effect of substantially increasing the penalties for offenses involving "Ecstasy".

(2) Amphetamine.—Section 3611 of the Methamphetamine Anti-Proliferation Act of 2000 directed the Commission to provide increased guideline penalties for amphetamine offenses such that those penalties are comparable to the base offense level for methamphetamine offenses. This amendment revises § 2D1.1 to include amphetamine in the Drug Quantity Table in subsection (c) of that guideline. This amendment also treats amphetamine and methamphetamine identically, at a 1:1 ratio, because of the similarities of the two substances.

(3) List I Chemicals.—Section 3651 of the Methamphetamine Anti-Proliferation Act of 2000 directed the Commission to "provide increased penalties for offenses involving ephedrine, phenylpropanolamine (PPA), or pseudoephedrine (including their salts, optical isomers, and salts of optical isomers) to correspond to the quality of controlled substance that reasonably could have been manufactured using the quality of ephedrine, PPA, and pseudoephedrine possessed or distributed." This amendment provides a new chemical quantity table in § 2D1.11 specifically for ephedrine, pseudoephedrine, and phenylpropanolamine (PPA). The table, which has a maximum based offense level of level 38, ties the base offense levels for these chemicals to the base offense levels for methamphetamine (actual) set forth in § 2D1.1. The amendment also makes conforming changes to the commentary in §§ 2D1.11 and 2D1.1.

(4) Human Trafficking.—This amendment implements the congressional directive in section 112(b) of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106–386. The directive requires the Commission to amend, if appropriate, the guidelines applicable to human trafficking (*i.e.*, peonage, involuntary servitude, and forced labor) offenses. It also requires the Commission to ensure that the guidelines "are sufficiently stringent to deter and adequately reflect the heinous nature of these offenses." This amendment (i) creates a new

guideline, § 2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act); (ii) refers violations of four new statutes, 18 U.S.C. 1589 (Forced Labor), 1590 (Trafficking with Respect to Peonage, Involuntary Servitude or Forced Labor), 1591 (Sex Trafficking of Children by Force, Fraud or Coercion) and 1952 (Unlawful Conduct with Respect to Documents in Furtherance of Peonage, Involuntary Servitude, or Forced Labor) to the appropriate guidelines; and (iii) makes changes, consistent with the directive, which both enhance sentences and reflect changes to three existing statutes: 18 U.S.C. 1581(a) (Peonage), 1583 (Enticement into Slavery) and 1584 (Sale into Involuntary Servitude).

(B) Non-Emergency Amendments.—Section 994 of title 28, United States Code, authorizes the Commission to promulgate sentencing guidelines and policy statements for federal courts. *See* 28 U.S.C. 994(a). Additionally, 28 U.S.C. 994 directs the Commission periodically to review and revise guidelines previously promulgated (*see* 28 U.S.C. 994(o)) and authorizes its to submit guidelines amendments to the Congress at or after the beginning of a regular session of Congress but not later than May 1 (*see* 18 U.S.C. 994(p)). Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on November 7, 2000 (*see* 65 FR 66792), and January 26, 2001 (*see* 66 FR 7962). The Commission held a public hearing on the proposed amendments in Washington, DC on March 19, 2001. After a review of hearing testimony and additional public comment, the Commission promulgated the amendments set forth herein (including amendments to make permanent the temporary, emergency amendments set forth in Part (A) of this notice). On May 1, 2001, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2001.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

Diana E. Murphy,
Chair.

(A) Emergency Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary, Effective May 1, 2001.

1. *Amendment:* The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 10 in the Drug

Equivalency Tables in the subdivision captioned “LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors)*” in the line referenced to “MDA” by striking “50 gm” and inserting “500 gm”; in the line referenced to “MDMA” by striking “35 gm” and inserting “500 gm”; in the line referenced to “MDEA” by striking “30 gm” and inserting “500 gm”; and by inserting “1 gm of Paramethoxymethamphetamine/PMA = 500 gm of marihuana” after the line referenced to “MDEA”.

Reason for Amendment: This amendment addresses the directive in the Ecstasy Anti-Proliferation Act of 2000 (the “Act”), section 3664 of Pub. L. 106–310, which instructs the Commission to provide, under emergency amendment authority, increased penalties for the manufacture, importation, exportation, or trafficking of Ecstasy. The directive specifically requires the Commission to increase the base offense level for 3,4-Methylenedioxymethamphetamine (MDMA), 3,4-Methylenedioxyamphetamine (MDA), 3,4-Methylenedioxy-N-ethylamphetamine (MDEA), Paramethoxymethamphetamine (PMA), and any other controlled substance that is marketed as Ecstasy and that has either a chemical structure similar to MDMA or an effect on the central nervous system substantially similar to or greater than MDMA.

The amendment addresses the directive by amending the Drug Equivalency Table in § 2D1.1, Application Note 10, to increase substantially the marihuana equivalencies for the specified controlled substances, which has the effect of substantially increasing the penalties for offenses involving Ecstasy. The new penalties for Ecstasy trafficking provide penalties which, gram for gram, are more severe than those for powder cocaine. Currently under the Drug Equivalency Table, one gram of powder cocaine has a marihuana equivalency of 200 grams. This amendment sets the marihuana equivalency for one gram of Ecstasy at 500 grams.

There are a combination of reasons why the Commission has substantially increased the penalties in response to the congressional directive. Much evidence received by the Commission indicated that Ecstasy: (1) has powerful pharmacological effects; (2) has the capacity to cause lasting physical harms, including brain damage; and (3) is being abused by rapidly increasing numbers of teenagers and young adults. Indeed, the market for Ecstasy is overwhelmingly comprised of people under the age of 25 years.

Before voting to promulgate this amendment, the Commission considered whether the penalty levels for Ecstasy should be set at the same levels as for heroin (*i.e.*, one gram of heroin has a marihuana equivalency of 1000 grams) and decided that somewhat lesser penalties were appropriate for Ecstasy for a number of reasons: (1) The potential for addiction is greater with heroin; (2) heroin distribution often involves violence while, at this time, violence is not reported in Ecstasy markets; (3) because it is a narcotic and is often injected, the risk of death from overdose is much greater from heroin; and (4) because heroin is often injected, there are more secondary health consequences, such as infections and the transmission of the human immunodeficiency virus (HIV) and hepatitis.

Finally, based on information regarding Ecstasy trafficking patterns, the penalty levels chosen are appropriate and sufficient to target serious and high-level traffickers and to provide appropriate punishment, deterrence, and incentives for cooperation. The penalty levels chosen for Ecstasy offenses provide five year sentences for serious traffickers (those whose relevant conduct involved at least 800 pills) and ten year sentences for high-level traffickers (those whose relevant conduct involved at least 8,000 pills).

2. *Amendment:* Section 2D1.1(c)(1) is amended by inserting after the fifth entry the following:

“15 KG or more of Amphetamine, or 1.5 KG or more of Amphetamine (actual);”.

Section 2D1.1(c)(2) is amended by inserting after the fifth entry the following:

“At least 5 KG but less than 15 KG of Amphetamine, or at least 500 G but less than 1.5 KG of Amphetamine (actual);”.

Section 2D1.1(c)(3) is amended by inserting after the fifth entry the following:

“At least 1.5 KG but less than 5 KG of Amphetamine, or at least 150 G but less than 500 G of Amphetamine (actual);”.

Section 2D1.1(c)(4) is amended by inserting after the fifth entry the following:

“At least 500 G but less than 1.5 KG of Amphetamine, or at least 50 G but less than 150 G of Amphetamine (actual);”.

Section 2D1.1(c)(5) is amended by inserting after the fifth entry the following:

“At least 350 G but less than 500 G of Amphetamine, or at least 35 G but

less than 50 G of Amphetamine (actual);”.

Section 2D1.1(c)(6) is amended by inserting after the fifth entry the following:

“At least 200 G but less than 350 G of Amphetamine, or at least 20 G but less than 35 G of Amphetamine (actual);”.

Section 2D1.1(c)(7) is amended by inserting after the fifth entry the following:

“At least 50 G but less than 200 G of Amphetamine, or at least 5 G but less than 20 G of Amphetamine (actual);”.

Section 2D1.1(c)(8) is amended by inserting after the fifth entry the following:

“At least 40 G but less than 50 G of Amphetamine, or at least 4 G but less than 5 G of Amphetamine (actual);”.

Section 2D1.1(c)(9) is amended by inserting after the fifth entry the following:

“At least 30 G but less than 40 G of Amphetamine, or at least 3 G but less than 4 G of Amphetamine (actual);”.

Section 2D1.1(c)(10) is amended by inserting after the fifth entry the following:

“At least 20 G but less than 30 G of Amphetamine, or at least 2 G but less than 3 G of Amphetamine (actual);”.

Section 2D1.1(c)(11) is amended by inserting after the fifth entry the following:

“At least 10 G but less than 20 G of Amphetamine, or at least 1 G but less than 2 G of Amphetamine (actual);”.

Section 2D1.1(c)(12) is amended by inserting after the fifth entry the following:

“At least 5 G but less than 10 G of Amphetamine, or at least 500 MG but less than 1 G of Amphetamine (actual);”.

Section 2D1.1(c)(13) is amended by inserting after the fifth entry the following:

“At least 2.5 G but less than 5 G of Amphetamine, or at least 250 MG but less than 500 MG of Amphetamine (actual);”.

Section 2D1.1(c)(14) is amended by inserting after the fifth entry the following:

“Less than 2.5 G of Amphetamine, or less than 250 MG of Amphetamine (actual);”.

Section 2D1.1(c) is amended in Note (B) of the “Notes to Drug Quantity Table” by inserting “, Amphetamine (actual),” after “terms ‘PCP (actual)’”; by inserting “, amphetamine,” after “substance containing PCP”; and by inserting “, amphetamine (actual),” after “weight of the PCP (actual)”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 9 by inserting “, amphetamine,” after “PCP”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned “Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*” by striking “200 gm” after “1 gm of Amphetamine=” and inserting “2 kg”; and by inserting “1 gm of Amphetamine (Actual) = 20 kg of marijuana” after the line referenced to “Amphetamine”.

Reason for Amendment: This emergency amendment implements the directive in the Methamphetamine Anti-

Proliferation Act of 2000, section 3611 of Pub. L. 106–310 (the “Act”), which directs the Commission to provide, under emergency amendment authority, increased guideline penalties for amphetamine such that those penalties are comparable to the base offense level for methamphetamine.

This amendment revised § 2D1.1 to include amphetamine in the Drug Quantity Table. This amendment also treats amphetamine and methamphetamine identically, at a 1:1 ratio (*i.e.*, the same quantities of amphetamine and methamphetamine would result in the same base offense level) because of the similarities of the two substances. Specifically, amphetamine and methamphetamine (1) chemically are similar; (2) are produced by a similar method and are trafficked in a similar manner; (3) share similar methods of use; (4) affect the same parts of the brain; and (5) have similar intoxicating effects. The amendment also distinguishes between pure amphetamine (*i.e.*, amphetamine (actual)) and amphetamine mixture in the same manner, and at the same quantities, as pure methamphetamine (*i.e.*, methamphetamine (actual)) and methamphetamine mixture, respectively. The amendment reflects the view that the 1:1 ratio is appropriate given the seriousness of these two controlled substances.

3. *Amendment:* Section 2D1.11 is amended by striking subsection (d), captioned “Chemical Quantity Table*”; and by striking the Notes that follow subsection (d), captioned “*Notes”, and inserting the following:

“(d)(1) EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE QUANTITY TABLE *
[Methamphetamine and Amphetamine Precursor Chemicals]

Quantity	Base offense level
(1) 3 KG or more of Ephedrine; 3 KG or more of Phenylpropanolamine; 3 KG or More of Pseudoephedrine.	Level 38
(2) At least 1 KG but less than 3 KG of Ephedrine; At least 1 KG but less than 3 KG of Phenylpropanolamine; At least 1 KG but less than 3 KG of Pseudoephedrine.	Level 36
(3) At least 300 G but less than 1 KG of Ephedrine; At least 300 G but less than 1 KG of Phenylpropanolamine; At least 300 G but less than 1 KG of Pseudoephedrine.	Level 34
(4) At least 100 G but less than 300 G of Ephedrine; At least 100 G but less than 300 G of Phenylpropanolamine; At least 100 G but less than 300 G of Pseudoephedrine.	Level 32
(5) At least 70 G but less than 100 G of Ephedrine; At least 70 G but less than 100 G of Phenylpropanolamine; At least 70 G but less than 100 G of Pseudoephedrine.	Level 30
(6) At least 40 G but less than 70 G of Ephedrine; At least 40 G but less than 70 G of Phenylpropanolamine; At least 40 G but less than 70 G of Pseudoephedrine.	Level 28
(7) At least 10 G but less than 40 G of Ephedrine; At least 10 G but less than 40 G of Phenylpropanolamine; At least 10 G but less than 40 G of Pseudoephedrine.	Level 26

“(d)(1) EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE QUANTITY TABLE *—Continued
[Methamphetamine and Amphetamine Precursor Chemicals]

Quantity	Base offense level
(8) At least 8 G but less than 10 G of Ephedrine; At least 8 G but less than 10 G of Phenylpropanolamine; At least 8 G but less than 10 G of Pseudoephedrine.	Level 24
(9) At least 6 G but less than 8 G of Ephedrine; At least 6 G but less than 8 G of Phenylpropanolamine; At least 6 G but less than 8 G of Pseudoephedrine.	Level 22
(10) At least 4 G but less than 6 G of Ephedrine; At least 4 G but less than 6 G of Phenylpropanolamine; At least 4 G but less than 6 G of Pseudoephedrine.	Level 20
(11) At least 2 G but less than 4 G of Ephedrine; At least 2 G but less than 4 G of Phenylpropanolamine; At least 2 G but less than 4 G of Pseudoephedrine.	Level 18
(12) At least 1 G but less than 2 G of Ephedrine; At least 1 G but less than 2 G of Phenylpropanolamine; At least 1 G but less than 2 G of Pseudoephedrine.	Level 16
(13) At least 500 MG but less than 1 G of Ephedrine; At least 500 MG but less than 1 G of Phenylpropanolamine; At least 500 MG but less than 1 G of Pseudoephedrine.	Level 14
(14) Less than 500 MG of Ephedrine; Less than 500 MG of Phenylpropanolamine; Less than 500 MG of Pseudoephedrine.	Level 12

*** Notes:**

(A) Except as provided in Note (B), to calculate the base offense level in an offense that involves two or more chemicals, use the quantity of the single chemical that results in the greatest offense level, regardless of whether the chemicals are set forth in different tables or in different categories (i.e., list I or list II) under subsection (d) of this guideline.

(B) To calculate the base offense level in an offense that involves two or more chemicals each of which is set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) aggregate the quantities of all such chemicals, and (ii) determine the base offense level corresponding to the aggregate quantity.

(C) In a case involving ephedrine, pseudoephedrine, or phenylpropanolamine tablets, use the weight of the ephedrine, pseudoephedrine, or phenylpropanolamine contained in the tablets, not the weight of the entire tablets, in calculating the base offense level.”

(d)(2) CHEMICAL QUANTITY TABLE*

[All other precursor chemicals]

Listed chemicals and quantity	Base offense level
(1) List I Chemicals 890 G or more of Benzaldehyde; 20 KG or more of Benzyl Cyanide; 200 G or more of Ergonovine; 400 G or more of Ergotamine; 20 KG or more of Ethylamine; 2.2 KG or more of Hydriodic Acid; 320 KG or more of Isosafrole; 200 G or more of Methylamine; 500 KG or more of N-Methylephedrine; 500 KG or more of N-Methylpseudoephedrine; 625 G or more of Nitroethane; 10 KG or more of Norpseudoephedrine; 20 KG or more of Phenylacetic Acid; 10 KG or more of Piperidine; 320 KG or more of Piperonal; 1.6 KG or more of Propionic Anhydride; 320 KG or more of Safrole; 400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone.	Level 30
(2) List I Chemicals At least 267 G but less than 890 G of Benzaldehyde; At least 6 KG but less than 20 KG of Benzyl Cyanide; At least 60 G but less than 200 G of Ergonovine; At least 120 G but less than 400 G of Ergotamine; At least 6 KG but less than 20 KG of Ethylamine; At least 660 G but less than 2.2 KG of Hydriodic Acid; At least 96 KG but less than 320 KG of Isosafrole; At least 60 G but less than 200 G of Methylamine;	Level 28

(d)(2) CHEMICAL QUANTITY TABLE*—Continued

[All other precursor chemicals]

Listed chemicals and quantity	Base offense level
At least 150 KG but less than 500 KG of N-Methylephedrine; At least 150 KG but less than 500 KG of N-Methylpseudoephedrine; At least 187.5 G but less than 625 G of Nitroethane; At least 3 KG but less than 10 KG of Norpseudoephedrine; At least 6 KG but less than 20 KG of Phenylacetic Acid; At least 3 KG but less than 10 KG of Piperidine; At least 96 KG but less than 320 KG of Piperonal; At least 480 G but less than 1.6 KG of Propionic Anhydride; At least 96 KG but less than 320 KG of Safrole; At least 120 KG but less than 400 KG of 3,4-Methylenedioxyphenyl-2-propanone; List II Chemicals 11 KG or more of Acetic Anhydride; 1175 KG or more of Acetone; 20 KG or more of Benzyl Chloride; 1075 KG or more of Ethyl Ether; 1200 KG or more of Methyl Ethyl Ketone; 10 KG or more of Potassium Permanganate; 1300 KG or more of Toluene.	Level 26
(3) List I Chemicals At least 89 G but less than 267 G of Benzaldehyde; At least 2 KG but less than 6 KG of Benzyl Cyanide; At least 20 G but less than 60 G of Ergonovine; At least 40 G but less than 120 G of Ergotamine; At least 2 KG but less than 6 KG of Ethylamine; At least 220 G but less than 660 G of Hydriodic Acid; At least 32 KG but less than 96 KG of Isosafrole; At least 20 G but less than 60 G of Methylamine; At least 50 KG but less than 150 KG of N-Methylephedrine; At least 50 KG but less than 150 KG of N-Methylpseudoephedrine; At least 62.5 G but less than 187.5 G of Nitroethane; At least 1 KG but less than 3 KG of Norpseudoephedrine; At least 2 KG but less than 6 KG of Phenylacetic Acid; At least 1 KG but less than 3 KG of Piperidine; At least 32 KG but less than 96 KG of Piperonal; At least 160 G but less than 480 G of Propionic Anhydride; At least 32 KG but less than 96 KG of Safrole; At least 40 KG but less than 120 KG of 3,4-Methylenedioxyphenyl-2-propanone; List II Chemicals At least 3.3 KG but less than 11 KG of Acetic Anhydride; At least 352.5 KG but less than 1175 KG of Acetone; At least 6 KG but less than 20 KG of Benzyl Chloride; At least 332.5 KG but less than 1075 KG of Ethyl Ether; At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone; At least 3 KG but less than 10 KG of Potassium Permanganate; At least 390 KG but less than 1300 KG of Toluene.	Level 24
(4) List I Chemicals At least 62.3 G but less than 89 G of Benzaldehyde; At least 1.4 KG but less than 2 KG of Benzyl Cyanide; At least 14 G but less than 20 G of Ergonovine; At least 28 G but less than 40 G of Ergotamine; At least 1.4 KG but less than 2 KG of Ethylamine; At least 154 G but less than 220 G of Hydriodic Acid; At least 22.4 KG but less than 32 KG of Isosafrole; At least 14 G but less than 20 G of Methylamine; At least 35 KG but less than 50 KG of N-Methylephedrine; At least 35 KG but less than 50 KG of N-Methylpseudoephedrine; At least 43.8 G but less than 62.5 of Nitroethane; At least 700 G but less than 1 KG of Norpseudoephedrine; At least 1.4 KG but less than 2 KG of Phenylacetic Acid; At least 700 G but less than 1 KG of Piperidine; At least 22.4 KG but less than 32 KG of Piperonal; At least 112 G but less than 160 G of Propionic Anhydride;	

(d)(2) CHEMICAL QUANTITY TABLE*—Continued
(All Other Precursor Chemicals)

Listed chemicals and quantity	Base offense level
At least 22.4 KG but less than 32 KG of Safrole; At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone; List II Chemicals At least 1.1 KG but less than 3.3 KG of Acetic Anhydride; At least 117.5 KG but less than 352.5 KG of Acetone; At least 2 KG but less than 6 KG of Benzyl Chloride; At least 107.5 but less than 322.5 KG of Ethyl Ether; At least 120 KG but less than 360 KG of Methyl Ethyl Ketone; At least 1 KG but less than 3 KG of Potassium Permanganate; At least 130 KG but less than 390 KG of Toluene.	
(5) List I Chemicals At least 35.6 G but less than 62.3 of Benzaldehyde; At least 800 G but less than 1.4 KG of Benzyl Cyanide; At least 8 G but less than 14 G of Ergonovine; At least 16 G but less than 28 G of Ergotamine; At least 800 G but less than 1.4 KG of Ethylamine; At least 88 G but less than 154 G of Hydriodic Acid; At least 12.8 KG but less than 22.4 KG of Isosafrole; At least 8 G but less than 14 G of Methylamine; At least 20 KG but less than 35 KG of N-Methylephedrine; At least 20 KG but less than 35 KG of N-Methylpseudoephedrine; At least 25 G but less than 43.8 G of Nitroethane; At least 400 G but less than 700 G of Norpseudoephedrine; At least 800 G but less than 1.4 KG of Phenylacetic Acid; At least 400 G but less than 700 G of Piperidine; At least 12.8 KG but less than 22.4 KG of Piperonal; At least 64 G but less than 112 G of Propionic Anhydride; At least 12.8 KG but less than 22.4 KG of Safrole; At least 16 KG but less than 28KG of 3,4-Methylenedioxyphenyl-2-propanone; List II Chemicals At least 726 G but less than 1.1 KG of Acetic Anhydride; At least 82.25 KG but less than 117.5 KG of Acetone; At least 1.4 KG but less than 2 KG of Benzyl Chloride; At least 75.25 KG but less than 107.5 KG of Ethyl Ether; At least 84 KG but less than 120 KG of Methyl Ethyl Ketone; At least 700 G but less than 1 KG of Potassium Permanganate; At least 91 KG but less than 130 KG of Toluene.	Level 22
(6) List I Chemicals At least 8.9 G but less than 35.6 G of Benzaldehyde; At least 200 G but less than 800 G of Benzyl Cyanide; At least 2 G but less than 8 G of Ergonovine; At least 4 G but less than 16 G of Ergotamine; At least 200 G but less than 800 G of Ethylamine; At least 22 G but less than 88 G of Hydriodic Acid; At least 3.2 KG but less than 12.8 KG of Isosafrole; At least 2 G but less than 8 G of Methylamine; At least 5 KG but less than 20 KG of N-Methylephedrine; At least 5 KG but less than 20 KG of N-Methylpseudoephedrine; At least 6.3 G but less than 25 G of Nitroethane; At least 100 G but less than 400 of Norpseudoephedrine; At least 200 G but less than 800 G of Phenylacetic Acid; At least 100 G but less than 400 G of Piperidine; At least 3.2 KG but less than 12.8 KG of Piperonal; At least 16 G but less than 64 G of Propionic Anhydride; At least 3.2 KG but less than 12.8 KG of Safrole; At least 4 KG but less than 16 KG of 3,4-Methylenedioxyphenyl-2-propanone; List II Chemicals At least 440 G but less than 726 G of Acetic Anhydride; At least 47 KG but less than 82.25 KG of Acetone;	Level 20

(d)(2) CHEMICAL QUANTITY TABLE*—Continued

[All Other Precursor Chemicals]

Listed chemicals and quantity	Base offense level
At least 800 G but less than 1.4 KG of Benzyl Chloride; At least 43 KG but less than 75.25 KG of Ethyl Ether; At least 48 KG but less than 84 KG of Methyl Ethyl Ketone; At least 400 G but less than 700 g of Potassium Permanganate;	
(7) List I Chemicals At least 7.1 G but less than 8.9 G of Benzaldehyde; At least 160 G but less than 200 G of Benzyl Cyanide; At least 1.6 G but less than 2 G of Ergonovine; At least 3.2 G but less than 4 G of Ergotamine; At least 160 G but less than 200 G of Ethylamine; At least 17.6 G but less than 22 G of Hydriodic Acid; At least 2.56 KG but less than 3.2 KG of Isosafrole; At least 1.6 G but less than 2 G of Methylamine; At least 4 KG but less than 5 KG of N-Methylephedrine; At least 4 KG but less than 5 KG of N-Methylpseudoephedrine; At least 5 G but less than 6.3 G of Nitroethane; At least 80 G but less than 100 G of Norpseudoephedrine; At least 160 G but less than 200 G of Phenylacetic Acid; At least 80 G but less than 100 G of Piperidine; At least 2.56 KG but less than 3.2 KG of Piperonal; At least 12.8 G but less than 16G of Propionic Anhydride; At least 2.56 KG but less than 3.2 KG of Safrole; At least 3.2 KG but less than 4 KG of 3,4-Methylenedioxypheyl-2-propanone; List II Chemicals At least 110 G but less than 440 G of Acetic Anhydride; At least 11.75 KG but less than 47 KG of Acetone; At least 200 G but less than 800 G of Benzyl Chloride; At least 10.75 KG but less than 43 KG of Ethyl Ether; At least 12 KG but less than 48 KG of Methyl Ethyl Ketone; At least 100 G but less than 400 G of Potassium Permanganate; At least 13 KG but less than 52 KG of Toluene.	Level 18
(8) List I Chemicals 3.6 KG or more of Anthranilic Acid; At least 5.3 G but less than 7.1 G of Benzaldehyde; At least 120 G but less than 160 G of Benzyl Cyanide; At least 1.2 G but less than 1.6 G of Ergonovine; At least 2.4 G but less than 3.2 G of Ergotamine; At least 120 G but less than 160 G of Ethylamine; At least 13.2 G but less than 17.6 G of Hydriodic Acid; At least 1.92 KG but less than 2.56 KG of Isosafrole; At least 1.2 G but less than 1.6 G of Methylamine; 4.8 KG or more of N-Acetylanthranilic Acid; At least 3 KG but less than 4 KG of N-Methylephedrine; At least 3 KG but less than 4 KG of N-Methylpseudoephedrine; At least 3.8 G but less than 5 G of Nitroethane; At least 60 G but less than 80 G of Norpseudoephedrine; At least 120 G but less than 160 G of Phenylacetic Acid; At least 60 G but less than 80 G of Piperidine; At least 1.92 KG but less than 2.56 KG of Piperonal; At least 9.6 G but less than 12.8 G of Propionic Anhydride; At least 1.92 KG but less than 2.56 KG of Safrole; At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxypheyl-2-propanone; List II Chemicals At least 88 G but less than 110 G of Acetic Anhydride; At least 9.4 KG but less than 11.75 KG of Acetone; At least 160 G but less than 200 G of Benzyl Chloride; At least 8.6 KG but less than 10.75 KG of Ethyl Ether; At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone; At least 80 G but less than 100 G of Potassium Permanganate; At least 10.4 KG but less than 13 KG of Toluene.	Level 16

(d)(2) CHEMICAL QUANTITY TABLE*—Continued
[All Other Precursor Chemicals]

Listed chemicals and quantity	Base offense level
(9) List I Chemicals At least 2.7 KG but less than 3.6 KG of Anthranilic Acid; At least 3.6 G but less than 5.3 G of Benzaldehyde; At least 80 G but less than 120 G of Benzyl Cyanide; At least 800 MG but less than 1.2 G of Ergonovine; At least 1.6 G but less than 2.4 G of Ergotamine; At least 80 G but less than 120 G of Ethylamine; At least 8.8 G but less than 13.2 G of Hydriodic Acid; At least 1.44 KG but less than 1.92 KG of Isosafrole; At least 800 MG but less than 1.2 G of Methylamine; At least 3.6 KG but less than 4.8 KG of N-Acetylanthranilic Acid; At least 2.25 KG but less than 3 KG of N-Methylephedrine; At least 2.25 KG but less than 3 KG of N-Methylpseudoephedrine; At least 2.5 G but less than 3.8 G of Nitroethane; At least 40 G but less than 60 G of Norpseudoephedrine; At least 80 G but less than 120 G of Phenylacetic Acid; At least 40 G but less than 60 G of Piperidine; At least 1.44 KG but less than 1.92 KG of Piperonal; At least 7.2 G but less than 9.6 G of Propionic Anhydride; At least 1.44 KG but less than 1.92 KG of Safrole; At least 1.8 KG but less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone; List II Chemicals At least 66 G but less than 88 G of Acetic Anhydride; At least 7.05 KG but less than 9.4 KG of Acetone; At least 120 G but less than 160 G of Benzyl Chloride; At least 6.45 KG but less than 8.6 KG of Ethyl Ether; At least 7.2 KG but less than 9.6 KG of Methyl Ethyl Ketone; At least 60 G but less than 80 G of Potassium Permanganate; At least 7.8 KG but less than 10.4 KG of Toluene.	Level 14
(10) List I Chemicals Less than 2.7 KG of Anthranilic Acid; Less than 3.6 G of Benzaldehyde; Less than 80 G of Benzyl Cyanide; Less than 800 MG of Ergonovine; Less than 1.6 G of Ergotamine; Less than 80 G of Ethylamine; Less than 8.8 G of Hydriodic Acid; Less than 1.44 KG of Isosafrole; Less than 800 MG of Methylamine; Less than 3.6 KG of N-Acetylanthranilic Acid; Less than 2.25 KG of N-Methylephedrine; Less than 2.25 KG of N-Methylpseudoephedrine; Less than 2.5 G of Nitroethane; Less than 40 G of Norpseudoephedrine; Less than 80 G of Phenylacetic Acid; Less than 40 G of Piperidine; Less than 1.44 KG of Piperonal; Less than 7.2 G of Propionic Anhydride; Less than 1.44 KG of Safrole; Less than 1.8 KG of 3,4-Methylenedioxyphenyl-2-propanone; List II Chemicals Less than 66 G of Acetic Anhydride; Less than 7.05 KG of Acetone; Less than 120 G of Benzyl Chloride; Less than 6.45 KG of Ethyl Ether; Less than 7.2 KG of Methyl Ethyl Ketone; Less than 60 G of Potassium Permanganate; Less than 7.8 KG of Toluene.	Level 12

*Notes:

(A) Except as provided in Note (B), to calculate the base offense level in an offense that involves two or more chemicals, use the quantity of the single chemical that results in the greatest offense level, regardless of whether the chemicals are set forth in different tables or in different categories (*i.e.*, list I or list II) under subsection (d) of this guideline.

(B) To calculate the base offense level in an offense that involves two or more chemicals each of which is set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) aggregate the quantities of all such chemicals, and (ii) determine the base offense level corresponding to the aggregate quantity.

(C) In a case involving ephedrine, pseudoephedrine, or phenylpropanolamine tablets, use the weight of the ephedrine, pseudoephedrine, or phenylpropanolamine contained in the tablets, not the weight of the entire tablets, in calculating the base offense level."

The commentary to § 2D1.1.1 captioned "Application Notes" is amended by striking Note 4 in its entirety and inserting the following:
"4. Cases Involving Multiple Chemicals.—

(A) Determining the Base Offense Level for Two or More Chemicals.—Except as provided in subdivision (B), if the offense involves two or more chemicals, use the quantity of the single chemical that results in the greatest offense level, regardless of whether the chemicals are set forth in different tables or in different categories. (*i.e.*, list I or list II) under subsection (d) of this guideline.

Example: The defendant was in possession of five kilograms of ephedrine and 300 grams of hydriodic acid. Ephedrine and hydriodic acid typically are used together in the same manufacturing process to manufacture methamphetamine. The base offense level for each chemical is calculated separately and the chemical with the higher base offense level is used. Five kilograms of ephedrine result in a base offense level of level 38; 300 grams of hydriodic acid result in a base offense level of level 26. In this case, the base offense level would be level 38.

(B) Determining the Base Offense Level for Offenses Involving Ephedrine, Pseudoephedrine, or Phenylpropanolamine.—If the offense involves two or more chemicals each of which is set forth in the Ephedrine, Pseudoephedrine, and Phenylpropanolamine Quantity Table, (i) aggregate the quantities of all such chemicals, and (ii) determine the base offense level corresponding to the aggregate quantity.

Example: The defendant was in possession of 80 grams of ephedrine and 50 grams of phenylpropanolamine, an aggregate quantity of 130 grams of such chemicals. The base offense level corresponding to that aggregate quantity is level 32.

(C) Upward Departure.—In a case involving two or more chemicals used to manufacture different controlled substances, or to manufacture one controlled substance by different manufacturing processes, an upward departure may be warranted if the offense level does not adequately address the seriousness of the offense."

The Commentary to § 2D1.1.1 captioned "Application Notes" is amended by striking Notes 5 and 6 in their entirety; and by redesignating Notes 7 and 8 as Notes 5 and 6, respectively.

The Commentary to § 2D1.1.1 captioned "Background" is amended in the first sentence by inserting "(including ephedrine, pseudoephedrine, and phenylpropanolamine)" after "list I chemicals".

The Commentary to 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" by inserting after the subdivision captioned "Schedule V Substances * * *" the following new subdivision:

"List I Chemicals (relating to the manufacture of amphetamine or methamphetamine)* * *

1 gm of Ephedrine = 10 kg of marihuana
1 gm of Phenylpropanolamine = 10 kg of marihuana
1 gm of Pseudoephedrine = 10 kg of marihuana

* * * Provided, that in a case involving ephedrine, pseudoephedrine, or phenylpropanolamine tablets, use the weight of the ephedrine, pseudoephedrine, or phenylpropanolamine contained in the tablets, not the weight of the entire tablets, in calculating the base offense level."

Reason for Amendment: This amendment is in response to the three-part directive in section 3651 of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106-310 (the "Act"), regarding enhanced punishment for trafficking in List I chemicals. That section requires the Commission to promulgate an amendment implementing the directive under emergency amendment authority.

First, this amendment provides a new chemical quantity table specifically for ephedrine, pseudoephedrine, and phenylpropanolamine (PPA). The table ties the base offense levels for these chemicals to the base offense levels for methamphetamine (actual) set forth in § 2D1.1, assuming a 50 percent actual yield of the controlled substance from the chemicals. (Methamphetamine (actual) is used rather than methamphetamine mixture because ephedrine, pseudoephedrine, and PPA produce methamphetamine (actual)). This yield is based on information provided by the Drug Enforcement Administration (DEA) that the typical yield of these substances for clandestine laboratories is 50 to 75 percent.

This new chemical quantity table has a maximum base offense level of level

38 (as opposed to a maximum base offense level of level 30 for all other precursor chemicals). Providing a maximum base offense level of the level 38 complies with the directive to establish penalties for these precursors that "correspond to the quantity of controlled substance that could have reasonably been manufactured using the quantity of ephedrine, phenylpropanolamine, or pseudoephedrine possessed or distributed." Additionally, this adjustment will have an impact on the relationship between §§ 2D1.1 and 2D1.11 by eliminating the six-level distinction that currently exists between offenses that involve intent to manufacture methamphetamine and offenses that involve an attempt to manufacture methamphetamine, at least for offenses involving ephedrine, pseudoephedrine, and PPA.

This amendment eliminates the Ephedrine Equivalency Table in § 2D1.11 and, in its place, provides an instruction for the court to determine the base offense level in cases involving multiple precursors (other than ephedrine, pseudoephedrine, or PPA) by using the quantity of the single chemical resulting in the greatest offense level. An upward departure is provided for cases in which the offense level does not adequately address the seriousness of the offense.

However, this amendment provides an exception to the rule for offenses that involve a combination of ephedrine, pseudoephedrine, or PPA because these chemicals often are used in the same manufacturing process. In a case that involves two or more of these chemicals, the base offense level will be determined using the total quantity of these chemicals involved. The purpose of this exception is twofold: (1) Any of the three primary precursors in the same table can be combined without difficulty; and (2) studies conducted by the DEA indicate that because the manufacturing process for amphetamine and methamphetamine is identical, there are cases in which the different precursors are included in the same batch of drugs. If the chemical is PPA, amphetamine results; and if the chemical is ephedrine, methamphetamine results.

Second, the amendment adds to the Drug Equivalency Tables in § 2D1.1 a conversion table for these precursor chemicals, providing for a 50 percent

conversion ratio. This is based on data from the DEA that the actual yield from ephedrine, pseudoephedrine, or PPA typically is in the range of 50 to 75 percent. The purpose of this part of the amendment is to achieve the same punishment level (as is achieved by the first part of this amendment) for an offense involving any of these precursor chemicals when such offense involved the manufacturer of methamphetamine and, as a result, is sentenced under § 2D1.1 pursuant to the cross reference in § 2D1.11.

Third, this amendment increases the base offense level for Benzaldehyde, Hydriodic Acid, Methylamine, Nitroethane, and Norpseudoephedrine by re-calibrating these levels to the appropriate quantity of methamphetamine (actual) that could be produced assuming a 50 percent yield of chemical to drug and retaining a cap at level 30. Previously, these chemicals had been linked to methamphetamine (mixture) penalty levels. Based on a study conducted by the DEA, ephedrine and pseudoephedrine are the primary precursors used to make methamphetamine in the United States. Phenylpropanolamine is the primary precursor used to make amphetamine. Unlike the five additional List I chemicals, the chemical structures of ephedrine, pseudoephedrine, and PPA are so similar to the resulting drug (*i.e.*, methamphetamine or amphetamine) that the manufacture of methamphetamine or amphetamine from ephedrine, pseudoephedrine, or PPA is a very simple one-step synthesis which anyone can perform using a variety of chemical reagents. The manufacture of methamphetamine or amphetamine from the five additional List I chemicals is a more complex process which requires a heightened level of expertise.

4. *Amendment:* The Commentary to § 2G1.1 captioned "Statutory Provisions" is amended by inserting "1591," before "2421".

The Commentary to § 2G1.1 captioned "Application Notes" is amended in Note 2 in the forth sentence by adding "(B)" after "purposes of subsection (b)(1)".

The Commentary to § 2G1.1 captioned "Application Notes" is amended by adding at the end the following:

"12. Upward Departure Provisions.—An upward departure may be warranted in either of the following circumstances: (A) The defendant was convicted under 18 U.S.C. 1591 and the offense involved a victim who had not attained the age of 14 years.

(B) The offense involved more than 10 victims."

The Commentary to § 2G1.1 captioned "Background" is amended by adding at the end the following paragraph:

"This guideline also covers offenses under section 1591 of title 18, United States Code. These offenses involve recruiting or transporting a person in interstate commerce knowing either that (1) force, fraud, or coercion will be used to cause the person to engage in a commercial sex act; or (2) the person (A) had not attained the age of 18 years; and (B) will be caused to engage in a commercial sex act."

The Commentary to § 2G2.1 captioned "Statutory Provisions" is amended by inserting "1591," before "2251(a)".

The Commentary to § 2G2.1 captioned "Application Notes" is amended by adding at the end the following:

"6. Upward Departure Provisions.—An upward departure may be warranted in either of the following circumstances:

(A) The defendant was convicted under 18 U.S.C. 1591 and the offense involved a victim who had not attained the age of 14 years.

(B) The offense involved more than 10 victims."

Section 2H4.1 is amended by striking subsection (a) in its entirety and inserting the following:

"(a) Base Offense Level (Apply the greater):

(1) 22; or

(2) 18, if the defendant was convicted of an offense under 18 U.S.C. 1592."

Section 2H4.1(b) is amended by striking subdivision (2) in its entirety and inserting the following:

"(2) If (A) a dangerous weapon was used, increase by 4 levels; or (B) a dangerous weapon was brandished, or the use of a dangerous weapon was threatened, increase by 2 levels."

The Commentary to § 2H4.1 captioned "Statutory Provisions" is amended by striking "1588" and inserting "1590, 1592".

The Commentary to § 2H4.1 captioned "Application Notes" is amended in Note 1 in the second paragraph by inserting "other" after "that a firearm or"; and by adding after "otherwise used." the following:

"The use of a dangerous weapon was threatened' means that the use of a dangerous weapon was threatened regardless of whether a dangerous weapon was present."

Chapter Two, Part H, is amended in Subpart 4 by adding at the end the following:

"§ 2H4.2. Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) If the offense involved (i) serious bodily injury, increase by 4 levels; or (ii) bodily injury, increase by 2 levels.

(2) If the defendant committed any part of the instant offense subsequent to sustaining a civil or administrative adjudication for similar misconduct, increase by 2 levels.

Commentary

Statutory Provision: 29 U.S.C. 1851.

Application Notes

1. **Definitions.**—For purposes of subsection (b)(1), 'bodily injury' and 'serious bodily injury' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. **Application of Subsection (b)(2).**—Section 1851 of title 29, United States Code, covers a wide range of conduct. Accordingly, the enhancement in subsection (b)(2) applies only if the instant offense is similar to previous misconduct that resulted in a civil or administrative adjudication under the provisions of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1801 *et. seq.*).

Section 5E1.1(a)(1) is amended by inserting "§ 1593," after "18 U.S.C."

The Commentary to § 5E1.1 captioned "Background" is amended in the first paragraph by inserting "§ 1593," after "18 U.S.C. §§".

Appendix A (Statutory Index) is amended in the line referenced to "18 U.S.C. § 241" by inserting ", 2H4.1" after "2H2.1".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. 1588" the following new lines:

18 U.S.C. 1590 2H4.1
18 U.S.C. 1591 2G1.1, 2G2.1
18 U.S.C. 1592 2H4.1"

Appendix A (Statutory Index) is amended by inserting after the line referenced to "29 U.S.C. 1141" the following:

"29 U.S.C. 1851 2H4.2".

Reason for Amendment: In promulgating this amendment, the Commission is cognizant of the extraordinarily serious nature of offenses that involve trafficking in human lives. This amendment is in response to the directive found at section 112(b) of the Victims of Trafficking and Violence Protection Act of 2000 (the "Act"). Pub. L. 106-386. The Commission expects to consider further revisions and additions to the specific offense characteristics and punishment levels for these offenses, such as the possibility of providing an alternative base offense level in § 2G1.1

(Promoting Prostitution or Prohibited Sexual Conduct) for convictions under 18 U.S.C. 1591 involving victims under the age of 14 years.

The directive confers emergency authority on the Commission to amend the federal sentencing guidelines to reflect changes to 18 U.S.C. 1581(a) (Peonage), 1583 (Enticement into Slavery), and 1584 (Sale into Involuntary Servitude). The Commission also is directed to consider how to address four new statutes: 18 U.S.C. 1589 (Forced Labor); 1590 (Trafficking with Respect to Peonage, Involuntary Servitude or Forced Labor); 1591 (Sex Trafficking of Children by Force, Fraud or Coercion); and 1592 (Unlawful Conduct with Respect to Documents in Furtherance of Peonage, Involuntary Servitude or Forced Labor).

Specifically, the Commission is directed to "review and, if appropriate, amend the sentencing guidelines applicable to * * * the trafficking of persons including * * * peonage, involuntary servitude, slave trade offenses, and possession, transfer or sale of false immigration documents in furtherance of trafficking, and the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act."

The Commission further is directed to "take all appropriate measures to ensure that these sentencing guidelines . . . are sufficiently stringent to deter and adequately reflect the heinous nature of these offenses." The Commission also is directed to "consider providing sentencing enhancements" in cases which involve: (1) A large number of victims; (2) a pattern of continued and flagrant violations; (3) the use or threatened use of a dangerous weapon; or (4) the death or bodily injury of any person.

To address this multi-faceted directive, this amendment makes changes to several existing guidelines and creates a new guideline for criminal violations of the Migrant and Seasonal Agricultural Worker Protection Act. Although the directive instructs the Commission to amend the guidelines applicable to the Fair Labor Standards Act (29 U.S.C. 201 et. seq.), a criminal violation of the Fair Labor Standards Act is only a Class B misdemeanor. *See* 29 U.S.C. 216. Thus, the guidelines are not applicable to those offenses.

The amendment references the new offense at 18 U.S.C. 1591 to § 2G1.1. Section 1591 punishes a defendant who participates in the transporting or harboring of a person, or who benefits from participating in such a venture, with the knowledge that force, fraud, or coercion will be used to cause that

person to engage in a commercial sex act or with knowledge that the person is not 18 years old and will be forced to engage in a commercial sex act. Despite the statute's inclusion in a chapter of title 18 devoted mainly to peonage offenses, section 1591 offenses are more analogous to the offenses referenced to the prostitution guideline.

Section 1591 cases alternatively have been referred in Appendix A to § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production). This has been done in anticipation that some portion of section 1591 cases will involve children being forced or coerced to engage in commercial sex acts for the purpose of producing pornography. Such offenses, as recognized by the higher base offense level at § 2G2.1, are more serious because they both involve specific harm to an individual victim and further an additional criminal purpose, namely, commercial pornography.

The amendment maintains the view that § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade) continues to be an appropriate tool for determining sentences for violations of 18 U.S.C. 1581, 1583, and 1584. Section 2H4.1 also is designed to cover offenses under three new statutes, 18 U.S.C. 1589, 1590, and 1592. Section 1589 punishes defendants who provide or obtain the labor or services of another by the use of threats of serious harm or physical restraint against a person, or by a scheme or plan intended to make the person believe that if he or she did not perform the labor or services, he or she would suffer physical restraint or serious harm. This statute also applies to defendants who provide or obtain labor or services of another by abusing or threatening abuse of the law or the legal process. *See* 18 U.S.C. 1589.

Section 1590 punishes defendants who harbor, transport, or are otherwise involved in obtaining, a person for labor or services. Section 1592 punishes a defendant who knowingly possesses, destroys, or removes an actual passport, other immigration document, or government identification document of another person in the course of a violation of § 1581 (peonage), § 1583 (enticement into slavery), § 1584 (sale into involuntary servitude), § 1589 (forced labor), § 1590 (trafficking with respect to these offenses), § 1591 (sex trafficking of children by force, fraud or coercion), § 1594(a) (attempts to violate these offenses). Section 1592 also punishes a defendant who, with intent

to violate § 1581, § 1583, § 1584, § 1589, § 1590, or § 1591, knowingly possesses, destroys, or removes an actual passport, other immigration document, or government identification document of another person. These statutes prohibit the types of behaviors that have been traditionally sentenced under § 2H4.1.

The amendment provides an alternative, less punitive base offense level of level 18 for those who violate 18 U.S.C. 1592, an offense which limits participation in peonage cases to the destruction or wrongful confiscation of a passport or other immigration document. This alternative, lower base level reflects the lower statutory maximum sentence for § 1592 offenses, (*i.e.*, 5 years).

Section 2H4.1(b)(2) has been expanded to provide a 4-level increase if a dangerous weapon was used and a 2-level increase if a dangerous weapon was brandished or its use was threatened. Currently, only actual use of a dangerous weapon is covered. This change reflects the directive to consider an enhancement for the "use or threatened use of a dangerous weapon." The commentary to § 2H4.1 is amended to clarify that the threatened use of a dangerous weapon applies regardless of whether a dangerous weapon was actually present.

The amendment also creates a new guideline, § 2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act), in response to the directive to amend the guidelines applicable to such offenses. These offenses, which have a statutory maximum sentence of one year imprisonment for first offenses and three years' imprisonment for subsequent offenses, currently are not referred to any specific guidelines. The amendment provides a base offense level of level 6 in recognition of the low statutory maximum sentences set for these cases by Congress. Further, these offenses typically involve violations of regulatory provisions. Setting the base offense level at level 6 provides consistency with guidelines for other regulatory offenses. *See, e.g.*, §§ 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) and 2N3.1 (Odometer Laws and Regulations). Subsections (b)(1), an enhancement for bodily injury, and (b)(2), an enhancement applicable to defendants who commit the instant offense after previously sustaining a civil penalty for similar misconduct, have been established to respond to the directive that the Commission consider sentencing enhancement for these

offense characteristics. This section addresses the Department of Justice's and the Department of Labor's concern regarding prior administrative and civil adjudications.

This amendment also addresses that portion of section 112 of the Act that amends chapter 77 of title 18, United States Code, to provide mandatory restitution for peonage and involuntary servitude offenses. The amendment amends § 5E1.1 (Restitution) to include a reference to 18 U.S.C. 1593 in the guideline provision regarding mandatory restitution.

By enactment of various sentencing enhancements and encouraged upward departures for areas of concern identified by Congress, the Commission has provided for more severe sentences for perpetrators of human trafficking offenses in keeping with the conclusion that the offenses covered by this amendment are both heinous in nature and being committed with rapidly increasing frequency.

(B) Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary, Effective November 1, 2001.

1. *Amendment:* The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 in the third sentence of the first paragraph by inserting "(written or made orally on the record)" after "agreement".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 by striking the first two sentences of the third paragraph and inserting:

"As set forth in the first paragraph of this note, an exception to this general rule is that if a plea agreement (written or made orally on the record) contains a stipulation that establishes a more serious offense than the offense of conviction, the guideline section applicable to the stipulated offense is to be used. A factual statement or a stipulation contained in a plea agreement (written or made orally on the record) is a stipulation for purposes of subsection (a) only if both the defendant and the government explicitly agree that the factual statement or stipulation is a stipulation for such purposes. However, a factual statement or stipulation made after the plea agreement has been entered, or after any modification to the plea agreement has been made, is not a stipulation for purposes of subsection (a)."

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 in the third paragraph by striking "may be imposed" and inserting "shall be imposed".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 in the second sentence of the fourth paragraph by striking "cases where" and inserting "a case in which".

Reason for Amendment: This amendment addresses the circuit conflict regarding whether admissions made by a defendant during a guilty plea hearing, without more, can be considered stipulations for purposes of subsection (a) of § 1B1.2 (Application Instructions). Compare, e.g., *United States v. Nathan*, 188 F.3d 190, 201 (3d Cir. 1999) (statement made by defendants during the factual-basis hearing for a plea agreement do not constitute stipulations for the purpose of this enhancement; a statement is a stipulation only if it is part of a defendant's written plea agreement or if both the government and the defendant explicitly agree at a factual-basis hearing that the facts being placed on the record are stipulations that might subject the defendant to § 1B1.2(a)); *United States v. Saaverda*, 148 F.3d 1311 (11th Cir. 1998) (same); *United States v. McCall*, 915 F.2d 811 (2d Cir. 1990) (same); *United States v. Gardner*, 940 F.2d (10th Cir. 1991) (requiring a "knowing agreement by the defendant, as part of a plea bargain, that facts supporting a more serious offense occurred and could be presented to the court"), and *United States v. Rutter*, 897 F.2d 1558, 1561 (10th Cir. 1990) (once the government agrees to a plea bargain without extracting an admission, facts admitted by the defendant can be considered only as relevant conduct in determining appropriate guideline range, not as stipulations under § 1B1.2(a)), with *United States v. Loos*, 165 F.3d 504, 508 (7th Cir. 1998) (the objective behind § 1B1.2(a) is best answered by interpreting "stipulations" to mean any acknowledgment by the defendant that the defendant committed the acts that justify use of the more serious guideline, not in the formal agreement); and *United States v. Domino*, 62 F.3d 716 (5th Cir. 1995) (same).

This amendment represents a narrow approach to the majority view that a factual statement made by the defendant during the plea colloquy must be made as part of the plea agreement in order to be considered a stipulation for purposes of § 1B1.2(a). This approach lessens the possibility that the plea agreement will be modified during the course of the plea proceeding without providing the parties, especially the defendant, with notice of the defendant's potential sentencing range.

2. *Amendment:* The Commentary to § 2A2.2 captioned "Application Notes"

is amended by striking Notes 1 through 3 and inserting the following:

"1. Definitions.—For purposes of guideline:

'Aggravated assault' means a felonious assault that involved (A) a dangerous weapon with intent to cause bodily injury (i.e., not merely to frighten) with that weapon; (B) serious bodily injury; or (C) an intent to commit another felony.

'Brandished,' 'bodily injury,' 'firearm,' 'otherwise used,' 'permanent or life threatening bodily injury,' and 'serious bodily injury,' have the meaning given those terms in § 1B1.1 (Application Instructions), Application Note 1.

'Dangerous weapon' has the meaning given that term in § 1B.1, Application Note 1, and includes any instrument that is not ordinarily used as a weapon (e.g., a car, a chair, or an ice pick) if such an instrument is involved in the offense with the intent to commit bodily injury.

Application of Subsection (b)(2).—In a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

3. More than Minimal Planning.—For purposes of subsection (b)(1), 'more than minimal planning' means more planning than is typical for commission of the offense in a simple form. 'More than minimal planning' also exists if significant affirmative steps were taken to conceal the offense, other than conduct to which § 3C1.1 (Obstructing or Impeding the Administration of Justice) applies. For example, waiting to commit the offense when no witnesses were present would not alone constitute more than minimal planning. By contrast, luring the victim to a specific location or wearing a ski mask to prevent identification would constitute more than minimal planning."

The Commentary to § 2A2.2 captioned "Background" is amended by striking the text of the background and inserting the following:

"This guideline covers felonious assaults that are more serious than minor assaults because of the presence of an aggravating factor, i.e., serious bodily injury, the involvement of a dangerous weapon with intent to cause bodily injury, or the intent to commit another felony. Such offenses occasionally may involve planning or be committed for hire. Consequently, the structure follows § 2A2.1 (Assault with Intent to Commit Murder, Attempted Murder). This guideline also covers attempted manslaughter and assault with intent to commit manslaughter. Assault with intent to commit murder is covered by § 2A2.1. Assault with intent to commit rape is covered by § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse.)

An assault that involves the presence of a dangerous weapon is aggravated in form when the presence of the dangerous weapon is coupled with the intent to cause bodily injury. In such a case, the base offense level and the weapon enhancement in subsection (b)(2) take into account different aspects of the offense, even if application of the base offense level and the weapon enhancement is based on the same conduct.”.

Reason for Amendment: This amendment responds to a circuit conflict regarding whether the four-level enhancement in subsection (b)(2)(B) of § 2A2.2 (Aggravated Assault) for use of a dangerous weapon during an aggravated assault is impermissible double counting. *Compare United States v. Williams*, 954 F.2d 204, 205–08 (4th circ. 1992) (applying the dangerous weapon enhancement under § 2A2.2(b)(2)(B) for defendant’s use of his chair as a dangerous weapon did not constitute impermissible double counting even though that conduct increased the defendant’s offense level twice: first, by triggering the application of the aggravated assault guideline, and second, as the basis for the four-level enhancement for use for a dangerous weapon), with *United States v. Hudson*, 972 F.2d 504, 506–07 (2d Cir. 1992) (in a case in which the use of an automobile caused the crime to be classified as an aggravated assault, the court may not enhance the base offense level under § 2A2.2(b) for use of the same, non-inherently dangerous weapon).

This amendment addresses the circuit conflict by providing in the aggravated assault guideline that (1) Both the base offense level of level 15 and the weapon use enhancement in subsection (b)(2) shall apply to aggravated assaults that involve a dangerous weapon with intent to cause bodily harm; and (2) an instrument, such as a car or chair, that ordinarily is not used as a weapon may qualify as a dangerous weapon for purposes of the use of the aggravated assault guideline and the application of subsection (b)(2) when the defendant involves it in the offense with the intent to cause bodily harm.

3. **Amendment:** The Commentary to § 2A3.1 captioned “Application Notes” is amended by striking Note 5 and Note 7; and by redesignating Note 6 as Note 5.

Section 2A3.2(a) is amended by striking subdivisions (1) and (2) and inserting the following:

“(1) 24, if the offense involved (A) a violation of chapter 117 of title 18, United States Code; and (B)(i) the commission of a sexual act; or (ii) sexual contact;

(2) 21, if the offense (A) involved a violation of chapter 117 of title 18,

United States Code; but (B) did not involve (i) the commission of a sexual act; or (ii) sexual contact; or (3) 18, otherwise.”.

Section 2A3.2(b) is amended by striking subdivision (4) and inserting the following:

“(4) If (A) subsection (a)(1) applies; and (B) none of subsections (b)(1) through (b)(3) applies, decrease by 6 levels.”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended in Note 1 by striking “For purposes of this guideline—” and inserting the following: “Definitions.—For purposes of this guideline:”; and by inserting before “‘Victim’ means” the following new paragraphs:

“‘Sexual act’ has the meaning given that term in 18 U.S.C. 2246(2).

‘Sexual contact’ has the meaning given that term in 18 U.S.C. 2246(3).”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended by striking Note 2 and Note 8; by redesignating Notes 3 through 7 as Notes 2 through 6, respectively; and by inserting after Note 6, as redesignated by this amendment, the following:

“7. Upward Departure Consideration.—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. For example, an upward departure may be warranted if the defendant committed the criminal sexual act in furtherance of a commercial scheme such as pandering, transporting persons for the purpose of prostitution, or the production of pornography.”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended in Note 2, as redesignated by this amendment, by inserting “Custody, Care, and Supervisory Control Enhancement.—” before “Subsection”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended in Note 3, as redesignated by this amendment, by inserting “Abuse of Position of Trust.—” before “If the”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended in Note 4, as redesignated by this amendment, by inserting “Misrepresentation of Identity.—” before “The enhancement”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended in Note 5, as redesignated by this amendment, by inserting “Use of Computer or Internet-Access Device.—” before “Subsection (b)(3) provides”.

The Commentary to § 2A3.2 captioned “Applications Notes” is amended in

Note 6, as redesignated by this amendment, by inserting “Cross Reference.—” before “Subsection (c)(1)”.

The Commentary to § 2A3.3 captioned “Application Notes” is amended by striking Note 4.

Section 2A3.4(b) is amended by adding at the end the following:

“(6) If the offense involved a violation of chapter 117 of title 18, United States Code, increase by 3 levels.”.

The Commentary to § 2A3.4 captioned “Application Notes” is amended by striking Note 8.

Section 3D1.2(d) is amended in the second paragraph by inserting after “§§ 2E4.1, 2E5.1;” the following new line: “§§ 2G2.2, 2G2.4;”.

Chapter Four, Part B is amended by adding at the end the following:

“§ 4B1.5. Repeat and Dangerous Sex Offender Against Minors

(a) In any case in which the defendant’s instant offense of conviction is a covered sex crime, § 4B1.1 (Career Offender) does not apply, and the defendant committed the instant offense of conviction subsequent to sustaining at least one sex offense conviction:

(1) The offense level shall be the greater of:

(A) the offense level determined under Chapters Two and Three; or

(B) the offense level from the table below decreased by the number of levels corresponding to any applicable adjustment from § 3E1.1 (Acceptance of Responsibility):

Offense statutory maximum	Offense level
(i) Life	37
(ii) 25 years or more	34
(iii) 20 years or more, but less than 25 years	32
(iv) 15 years or more, but less than 20 years	29
(v) 10 years or more, but less than 15 years	24
(vi) 5 years or more, but less than 10 years	17
(vii) More than 1 year, but less than 5 years	12

(2) The criminal history category shall be the greater of: (A) the criminal history category determined under Chapter Four, Part A (Criminal History); or (B) criminal history Category V.

(b) In any case in which the defendant’s instant offense of conviction is a covered sex crime, neither § 4B1.1 nor subsection (a) of this guideline applies, and the defendant engaged in a pattern of activity involving prohibited sexual conduct:

(1) The offense level shall be 5 plus the offense level determined under

Chapters Two and Three. However, if the resulting offense level is less than level 22, the offense level shall be level 22, decreased by the number of levels corresponding to any applicable adjustment from § 3E1.1.

(2) The criminal history category shall be the criminal history category determined under Chapter Four, Part A.

Commentary

Application Notes

1. Definitions.—For purposes of this guideline:

‘Minor’ means an individual who had not attained the age of 18 years.

‘Minor victim’ includes (A) an undercover law enforcement officer who represented to the defendant that the officer was a minor; or (B) any minor the officer represented to the defendant would be involved in the prohibited sexual conduct.

2. Covered Sex Crime as Instant Offense of Conviction.—For purposes of this guideline, the instant offense of conviction must be a covered sex crime, i.e.: (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of such title, not including trafficking in, receipt of, or possession of, child pornography, or a recordkeeping offense; (iii) chapter 117 of such title, not including transmitting information about a minor or filing a factual statement about an alien individual; or (B) an attempt or a conspiracy to commit any offense described in subdivisions (A)(i) through (iii) of this note.

3. Application of Subsection (a).—

(A) Definitions.—For purposes of subsection (a):

(i) ‘Offense statutory maximum’ means the maximum term of imprisonment authorized for the instant offense of conviction that is a covered sex crime, including any increase in that maximum term under a sentencing enhancement provision (such as a sentencing enhancement provision contained in 18 U.S.C. 2247(a) or 2426(a)) that applies to that covered sex crime because of the defendant’s prior criminal record.

(ii) ‘Sex offense conviction’ (I) means any offense described in 18 U.S.C. 2426(b)(1)(A) or (B), if the offense was perpetrated against a minor; and (II) does not include trafficking in, receipt of, or possession of, child pornography. ‘Child pornography’ has the meaning given that term in 18 U.S.C. 2256(8).

(B) Determination of Offense Statutory Maximum in the Case of Multiple Counts of Conviction.—In a case in which more than one count of the

instant offense of conviction is a felony that is a covered sex crime, the court shall use the maximum authorized term of imprisonment for the count that has the greatest offense statutory maximum, for purposes of determining the offense statutory maximum under subsection (a).

4. Application of Subsection (b).—

(A) Definition.—For purposes of subsection (b), ‘prohibited sexual conduct’ (i) means any offense described in 18 U.S.C. 2426(b)(1)(A) or (B); (ii) includes the production of child pornography; (iii) includes trafficking in child pornography only if, prior to the commission of the instant offense of conviction, the defendant sustained a felony conviction for that trafficking in child pornography; and (iv) does not include receipt or possession of child pornography. ‘Child pornography’ has the meaning given that term in 18 U.S.C. 2256(8).

(B) Determination of Pattern of Activity.—

(i) In General.—For purposes of subsection (b), the defendant engaged in a pattern of activity involving prohibited sexual conduct if—

(I) on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor; and

(II) there were at least two minor victims of the prohibited sexual conduct.

For example, the defendant engaged in a pattern of activity involving prohibited sexual conduct if there were two separate occasions of prohibited sexual conduct and each such occasion involved a different minor, or if there were two separate occasions of prohibited sexual conduct involving the same two minors.

(ii) Occasion of Prohibited Sexual Conduct.—An occasion of prohibited sexual conduct may be considered for purposes of subsection (b) without regard to whether the occasion (I) occurred during the course of the instant offense; or (II) resulted in a conviction for the conduct that occurred on that occasion.

5. Treatment and Monitoring.—

(A) Recommended Maximum Term of Supervised Release.—The statutory maximum term of supervised release is recommended for offenders sentenced under this guideline.

(B) Recommended Conditions of Probation and Supervised Release.—Treatment and monitoring are important tools for supervising offenders and should be considered as special conditions of any term of probation or supervised release that is imposed.

Background: The guideline is intended to provide lengthy

incarceration for offenders who commit sex offenses against minors and who present a continuing danger to the public. It applies to offenders whose instant offense of conviction is a sex offense committed against a minor victim. The relevant criminal provisions provide for increased statutory maximum penalties for repeat sex offenders and make those increased statutory maximum penalties available if the defendant previously was convicted of any of several federal and state sex offenses (see 18 U.S.C. 2247, 2426). In addition, section 632 of Pub. L. 102–141 and section 505 of Pub. L. 105–314 directed the Commission to ensure lengthy incarceration for offenders who engage in a pattern of activity involving the sexual abuse or exploitation of minors.”

Section 5B1.3(d) is amended by adding at the end the following:

“(7) Sex Offenses

If the instant offense of conviction is a sex offense, as defined in § 5D1.2 (Term of Supervised Release)—a condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.”

Section 5D1.2 is amended by adding after subsection (b) the following:

“(c) If the instant offense of conviction is a sex offense, the statutory maximum term of supervised release is recommended.”

The Commentary to § 5D1.2 captioned “Application Notes” is amended by redesignating Notes 1 and 2 as Notes 2 and 3, respectively; by inserting before Note 2, as redesignated by this amendment, the following:

“1. Definition.—For purposes of this guideline, ‘sex offense’ means (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of such title, not including a recordkeeping offense; or (iii) chapter 117 of such title, not including transmitting information about a minor or filing a factual statement about an alien individual; or (B) an attempt or a conspiracy to commit any offense described in subdivisions (A)(i) through (iii) of this note.”; and in Note 2, as redesignated by this amendment, by inserting “Safety Valve Cases.—” before “A defendant”; and in Note 3, as redesignated by this amendment, by inserting “Substantial Assistance Cases.—” before “Upon motion”.

Section 5D1.3(d) is amended by inserting at the end the following:

“(7) Sex Offenses

If the instant offense of conviction is a sex offense, as defined in § 5D1.2

(Term of Supervised Release)—a condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.”.

Reason for Amendment: This is a three-part amendment promulgated primarily in response to the Protection of Children from Sexual Predators Act of 1998, Pub. L. 105–314 (the “Act”), which contains several directives to the Commission. In furtherance of the directives, the Commission initiated a comprehensive examination of the guidelines under which most sex crimes are sentenced. Amendment 592, effective November 1, 2000, addressed a number of these directives. (See USSC Guidelines Manual 2000 Supplement to Appendix C, Amendment 592.)

The first part of the amendment addresses the Act’s directive to increase penalties in any case in which the defendant engaged in a pattern of activity of sexual abuse or sexual exploitation of a minor. In response to this directive, the amendment provides a new Chapter Four (Criminal History and Criminal Livelihood) guideline, § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors), that focuses on repeat child sex offenders. This new guideline works in a coordinated manner with § 4B1.1 (Career Offender) and creates a tiered approach to punishing repeat child sex offenders.

The first tier, in § 4B1.5(a), aims to incapacitate repeat child sex offenders who have an instant offense of conviction of sexual abuse of a minor and a prior felony conviction for sexual abuse of a minor (but to whom § 4B1.1 does not apply). This provision subjects a defendant to the greater of the offense level determined under Chapters Two and Three or the offense level obtained from a table that, like the table in § 4B1.1, bases the applicable offense level on the statutory maximum for the offense. In addition, the defendant is subject to an enhanced criminal history category of not less than Category V, similar to § 4B1.1 (which provides for Category VI). By statute, defendants convicted of a federal sex offense are subject to twice the statutory maximum penalty for a subsequent sex offense conviction. This guideline provision effectuates the Commission’s and Congress’s intent to punish repeat child sex offenders severely.

The second tier, in § 4B1.5(b), provides a five-level increase in the offense level and a minimum offense level of level 22 for defendants who are not subject to either § 4B1.1 or to § 4B1.5(a) and who have engaged in a pattern of activity involving prohibited

sexual conduct with minors. This part of the guideline does not rely on prior convictions to increase the penalty for those who have a pattern of activity of sexual abuse or exploitation of a minor. The pattern of activity enhancement requires that the defendant engaged in prohibited sexual conduct on at least two separate occasions and that at least two minors were victims of the sexual conduct. This provision is similar to the existing five-level pattern of activity enhancement in subsection (b)(4) of § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic) and effectuates the Commission’s and Congress’s intent to punish severely offenders who engage in a pattern of activity involving the sexual abuse or exploitation of minors.

Conforming amendments are made to the criminal sexual abuse guidelines in Chapter Two, Part A, Subpart 3 to delete the upward departure provisions for prior sentences for similar conduct; that factor is now taken into account in the new guideline.

In addition to creating a new guideline, this part of the amendment also modifies § 5D1.2 (Term of Supervised Release) to provide that the recommended term of supervised release for a defendant convicted of a sex crime is the maximum term authorized by statute. Amendments to § 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release) effectuate the Commission’s intent that offenders who commit sex crimes receive appropriate treatment and monitoring.

The second part of the amendment addresses a circuit conflict regarding whether multiple counts of possession, receipt, or transportation of images containing child pornography should be grouped together pursuant to subsection (a) or (b) of § 3D1.2 (Groups of Closely Related Counts). Resolution of the conflict depends, in part, on determining who is the victim of the offense: the child depicted in the pornography images or society as a whole. Six circuits have held that the child depicted is the victim, and, therefore, that the counts are not grouped. *See United States v. Norris*, 159 F.3d 926 (5th Cir. 1998); *United States v. Hibbler*, 159 F.3d 233 (6th Cir. 1998); *United States v. Ketcham*, 80 F.3d 789 (3d Cir. 1996); *United States v. Rugh*, 968 F.2d 750 (8th Cir. 1992); *United States v. Boos*, 127 F.3d 1207 (9th Cir. 1997), *cert. denied*, 522 U.S.

1066 (1998); and *United States v. Tillmon*, 195 F.3d 640 (11th Cir. 1999). In contrast, one circuit has held that society as a whole is the victim of these types of offenses, and, therefore, that one count of interstate transportation of child pornography does not group with a count of interstate transportation of a minor with intent to engage in illegal sexual activity in a case in which the child portrayed in the pornography was the same child transported. *See United States v. Toler*, 901 F.2d 399 (4th Cir. 1990).

In addressing the circuit conflict, the Commission adopted a position that provides for grouping of multiple counts of child pornography distribution, receipt, and possession pursuant to § 3D1.2(d). Grouping multiple counts of these offenses pursuant to § 3D1.2(d) is appropriate because these offenses typically are continuous and ongoing enterprises. This grouping provision does not require the determination of whether counts involve the same victim in order to calculate a combined adjusted offense level for multiple counts of conviction which, particularly in these kinds of cases, could be complex and time consuming. Consistent with the provisions of subsection (a)(2) of § 1B1.3 (Relevant Conduct), this approach provides that additional images of child pornography (often involved in the case, but outside of the offense of conviction) shall be considered by the court in determining the appropriate sentence for the defendant if the conduct related to those images is part of the same course of conduct or common scheme or plan.

The third part of the amendment makes several modifications to § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts). The amendment responds to the directive in the Act to provide an enhancement for offenses under chapter 117 of title 18, United States Code, involving the transportation of minors for prostitution or prohibited sexual conduct. The amendment increases the offense levels in § 2A3.2 and in § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact). The Act focuses on those individuals who travel to meet or transport minors for illegal sexual activity by providing increased statutory maximum penalties for those individuals. In response, the increase in penalties in these guidelines were geared toward those individuals. Specifically, the amendment distinguishes between chapter 117 offenses that involve the commission of a sexual act or sexual contact and those offenses (e.g., sting cases) that do not, by

providing an alternative base offense level in § 2A3.2 for chapter 117 offenses that also involve the commission of a sexual act or sexual contact that is three levels greater (i.e., level 24) than the base offense level applicable to chapter 117 offenses that do not involve a sexual act or sexual contact.

The amendment provides a three-level increase in the base offense level for offenses sentenced under § 2A3.2, such that the base offense level (1) for statutory rape unaccompanied by aggravating conduct is increased from level 15 to level 18; (2) for a chapter 117 offense (unaccompanied by a sexual act or sexual contact) is increased from level 18 to level 21; and (3) for a chapter 117 offense (accompanied by a sexual act or sexual contact) results in a base offense level of level 24. The amendment reflects the seriousness accorded criminal sexual abuse offenses by Congress, which provided for statutory maximum penalties of 15 years' imprisonment (or 30 years' imprisonment with a prior conviction for a sex crime). A defendant who transmits child pornography to a minor as a means of enticing the minor to engage in illegal sexual activity will receive a sentence increase when that defendant subsequently travels across state lines to engage in illegal sexual activity with that minor. Therefore, this increase also maintains the proportionality between §§ 2A3.2 and 2G2.2.

The third part of the amendment also makes conforming changes to § 2A3.2 to ensure that some chapter 117 offenses that do not include aggravating conduct receive the offense level applicable to statutory rape in its basic form. Technical changes made by the amendment (such as the addition of headings and the reordering of applications notes) are not intended to have substantive effect.

4. *Amendment:* Section 2A6.2(a) is amended by striking "14" and inserting "18".

Section 2A6.2(c) is amended by striking subdivision (1) and inserting the following:

"(1) If the offense involved the commission of another criminal offense, apply the offense guideline from Chapter Two, Part A (Offenses Against the Person) most applicable to that other criminal offense, if the resulting offense level is greater than that determined above."

The Commentary to § 2A6.2 captioned "Application Notes" is amended in Note 1 by striking the 1-em dash and inserting a colon; and by striking the last paragraph and inserting the following:

" 'Stalking means (A) traveling with the intent to kill, injure, harass, or intimidate another person and, in the course of, or as a result of, such travel, placing the person in reasonable fear of death or serious bodily injury to that person or an immediate family member of that person; or (B) using the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, that person or an immediate family member of that person. See 18 U.S.C. § 2261A.

'Immediate family member' (A) has the meaning given that term in 18 U.S.C. § 115(c)(2); and (B) includes a spouse or intimate partner. 'Course of conduct' and 'spouse or intimate partner' have the meaning given those terms in 18 U.S.C. § 2266(2) and (7), respectively."

The Commentary to § 1B1.5 captioned "Application Notes" is amended in Note 3 by inserting after the first sentence the following:

"Consistent with the provisions of § 1B1.3 (Relevant Conduct), such other offense includes conduct that may be a state or local offense and conduct that occurred under circumstances that would constitute a federal offense had the conduct taken place within the territorial or maritime jurisdiction of the United States."

Reason for Amendment: This amendment addresses section 1107 of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (the "Act"). That section amends 18 U.S.C. 2261, 2261A, and 2262 to broaden the reach of those statutes to include international travel to stalk, commit domestic violence, or violate a protective order. Section 2261A also is amended to broaden the category of persons protected by this statute to include intimate partners of the person stalked. The Act also creates a new offense at section 2261A(2) that prohibits the use of the mail or any facility of interstate or foreign commerce to commit a stalking offense. Several technical changes were also made to these statutes.

The Act includes a directive to the Commission to amend the federal sentencing guidelines to reflect the changes made to 18 U.S.C. 2261, with specific consideration to be given to the following factors: (1) whether the guidelines relating to stalking offenses should be modified in light of the amendment made by this subsection; and (2) whether any changes the Commission may make to the guidelines pursuant to clause (1) should also be made with respect to offenses under chapter 110A of title 18, United States

Code (stalking and domestic violence offenses).

For several reasons, the amendment refers the new stalking by mail offense, like other stalking offenses, to § 2A6.2 (Stalking or Domestic Violence). First, the statutory penalties for stalking by mail are the same as the statutory penalties for other stalking offenses. Second, although there was some consideration to refer this new offense to § 2A6.1 (Threatening or Harassing Communications), stalking by mail offenses differ significantly from threatening communications in that the former require the defendant's intent to kill, or injure a person, or place a person in reasonable fear of death or serious bodily injury. Third, referencing stalking by mail offenses to § 2A6.1 could result in these offenses receiving higher penalties than other stalking offenses. For example, a defendant who writes a threatening letter, violates a protective order, and engages in some conduct evidencing an intent to carry out such threat, would receive an offense level of level 20 under § 2A6.1. A defendant who engages in stalking by mail, violates a protective order, and actually commits bodily injury on the person who is the subject of the protection order would have received, prior to this amendment, an offense level of level 18 under § 2A6.2. This amendment reflects the policy judgment that the second defendant should receive punishment equal to, or perhaps greater than, that received by the first defendant. Accordingly, because of concern for proportionality in sentencing stalking and domestic violence offenses relative to other crimes, such as threatening or harassing communications, this amendment increases the base offense level in § 2A6.2 from level 14 to level 18. Setting the base offense level at level 18 for stalking and domestic violence crimes ensures that these offenses are sentenced at or above the offense levels for offenses involving threatening and harassing communications.

The amendment also conforms the definition of "stalking" in Application Note 1 of § 2A6.2 to the statutory changes made by the Act. Additionally, the amendment modifies the language of subsection (c) in § 2A6.2 to clarify application of the cross reference. This change is consistent with the amendment to Application Note 3 of § 1B1.5 (Interpretation of References to Other Offense Guidelines), which also clarifies the operation of cross references generally.

These revisions are designed to clarify that, unless otherwise specified, cross references in Chapter Two (Offense

Conduct) are to be determined consistently with the provisions of § 1B1.3 (Relevant Conduct). Therefore, in a case in which the guideline includes a reference to use another guideline if the conduct involved another offense, the other offense includes conduct that may be a state or local offense and conduct that occurred under circumstances that would constitute a federal offense had the conduct taken place within the territorial or maritime jurisdiction of the United States.

5. *Amendment:* Chapter Two is amended by striking the heading to Part B, the heading to Subpart 1 of Part B, and the Introductory Commentary to such subpart and inserting the following:

“PART B—BASIC ECONOMIC OFFENSES

1. Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, and Offenses Involving Fraud or Deceit

Introductory Commentary

These sections address basic forms of property offenses: theft, embezzlement, fraud, forgery, counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States), insider trading, transactions in stolen goods, and simple property damage or destruction. (Arson is dealt with separately in Chapter Two, Part K (Offenses Involving Public Safety)). These guidelines apply to offenses prosecuted under a wide variety of federal statutes, as well as offenses that arise under the Assimilative Crimes Act.”

Chapter Two, Part B is amended by striking § 2B1.1, and its accompanying commentary, and inserting the following:

“§ 2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) If the loss exceeded \$5,000, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) \$5,000 or less	no increase
(B) More than \$5,000	add 2
(C) More than \$10,000	add 4
(D) More than \$30,000	add 6
(E) More than \$70,000	add 8
(F) More than \$120,000	add 10

Loss (apply the greatest)	Increase in level
(G) More than \$200,000	add 12
(H) More than \$400,000	add 14
(I) More than \$1,000,000	add 16
(J) More than \$2,500,000	add 18
(K) More than \$7,000,000	add 20
(L) More than \$20,000,000	add 22
(M) More than \$50,000,000 ...	add 24
(N) More than \$100,000,000	add 26.

(2) (Apply the greater) If the offense—
(A) (i) involved more than 10, but less than 50, victims; or (ii) was committed through mass-marketing, increase by 2 levels; or

(B) involved 50 or more victims, increase by 4 levels.

(3) If the offense involved a theft from the person of another, increase by 2 levels.

(4) If the offense involved receiving stolen property, and the defendant was a person in the business of receiving and selling stolen property, increase by 2 levels.

(5) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by 2 levels.

(6) If the offense involved theft of, damage to, or destruction of, property from a national cemetery, increase by 2 levels.

(7) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; (B) a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; (C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D) a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(8) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(9) If the offense involved (A) the possession or use of any device-making equipment; (B) the production or trafficking of any unauthorized access

device or counterfeit access device; or (C)(i) the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification; or (ii) the possession of 5 or more means of identification that unlawfully were produced from, or obtained by the use of, another means of identification, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(10) If the offense involved an organized scheme to steal vehicles or vehicle parts, and the offense level is less than level 14, increase to level 14.

(11) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(12) (Apply the greater) If—

(A) the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by 2 levels; or

(B) the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels.

If the resulting offense level determined under subdivision (A) or (B) is less than level 24, increase to level 24.

(c) Cross References

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of any such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or possessed was a firearm, destructive device, explosive material, or controlled substance, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)); Attempt or Conspiracy), § 2D2.1 (Unlawful Possession; Attempt or Conspiracy), § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), as appropriate.

(2) If the offense involved arson, or property damage by use of explosives, apply § 2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.

(3) If (A) neither subdivision (1) nor (2) of this subsection applies; (B) the defendant was convicted under a statute proscribing false, fictitious, or

fraudulent statements or representations generally (e.g., 18 U.S.C. 1001, 1341, 1342, or 1343); and (C) the conduct set forth in the count of conviction establishes an offense specifically covered by another guideline in Chapter Two (Offense Conduct), apply that other guideline.

(d) Special Instruction

(1) If the defendant is convicted under 18 U.S.C. 1030(a)(4) or (5), the minimum guideline sentence, notwithstanding any other adjustment, shall be six months' imprisonment.

Commentary

Statutory Provisions: 7 U.S.C. 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. 50, 77e, 77q, 77x, 78j, 78ff, 80b-6, 1644, 6821; 18 U.S.C. 38, 225, 285-289, 471-473, 500, 510, 553(a)(1), 641, 656, 657, 659, 662, 1001-1008, 1010-1014, 1016-1022, 1025, 1026, 1028, 1029, 1030(a)(4)-(5), 1031, 1341-1344, 1361, 1363, 1702, 1703 (if vandalism or malicious mischief, including destruction of mail, is involved), 1708, 1831, 1832, 2113(b), 2312-2317; 29 U.S.C. 501(c); 42 U.S.C. 1011; 49 U.S.C. 30170, 46317(a). For additional statutory provision(s) see Appendix A (Statutory Index).

Application Notes

1. Definitions.—For purposes of this guideline:

“Financial institution” includes any institution described in 18 U.S.C. 20, 656, 657, 1005, 1006, 1007, or 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical, or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. “Union or employee pension fund” and “any health, medical, or hospital insurance association,” primarily include large pension funds that serve many persons (e.g., pension funds or large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

“Firearm” and “destructive device” have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

“Foreign instrumentality” and “foreign agent” have the meaning given those terms in 18 U.S.C. 1839(1) and (2), respectively.

“National cemetery” means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

“Theft from the person of another” means theft, without the use of force, of property that was being held by another person or was within arms' reach.

Examples include pick-pocketing and non-forcible purse-snatching, such as the theft of a purse from a shopping cart.

“Trade secret” has the meaning given that term in 18 U.S.C. 1839(3).

2. Loss Under Subsection (b)(1).—This application note applies to the determination of loss under subsection (b)(1).

(A) General Rule.—Subject to the exclusions in subdivision (D), loss is the greater of actual loss or intended loss.

(i) Actual Loss.—“Actual loss” means the reasonably foreseeable pecuniary harm that resulted from the offense.

(ii) Intended Loss.—“Intended loss” (I) means the pecuniary harm that was intended to result from the offense; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur (e.g., as in a government sting operation, or an insurance fraud in which the claim exceeded the insured value).

(iii) Pecuniary Harm.—“Pecuniary harm” means harm that is monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does not include emotional distress, harm to reputation, or other non-economic harm.

(iv) Reasonably Foreseeable Pecuniary Harm.—For purposes of this guideline, “reasonably foreseeable pecuniary harm” means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.

(v) Rules of Construction in Certain Cases.—In the cases described in subdivisions (I) through (III), reasonably foreseeable pecuniary harm shall be considered to include the pecuniary harm specified for those cases as follows:

(I) Product Substitution Cases.—In the case of a product substitution offense, the reasonably foreseeable pecuniary harm includes the reasonably foreseeable costs of making substitute transactions and handling or disposing of the product delivered, or of retrofitting the product so that it can be

used for its intended purpose, and the reasonably foreseeable costs of rectifying the actual or potential disruption to the victim's business operations caused by the product substitution.

(II) Procurement Fraud Cases.—In the case of a procurement fraud, such as a fraud affecting a defense contract award, reasonably foreseeable pecuniary harm includes the reasonably foreseeable administrative costs to the government and other participants of repeating or correct the procurement action affected, plus any increased costs to procure the product or service involved that was reasonably foreseeable.

(III) Protected Computer Cases.—In the case of an offense involving unlawfully accessing, or exceeding authorized access to, a “protected computer” as defined in 18 U.S.C. 1030(e)(2), actual loss includes the following pecuniary harm, regardless of whether such pecuniary harm was reasonably foreseeable: reasonable costs to the victim of conducting a damage assessment, and restoring the system and data to their condition prior to the offense, and any lost revenue due to interruption of service.

(B) Gain.—The court shall use the gain that resulted from the offense as an alternative measure of loss only if there is a loss but it reasonably cannot be determined.

(C) Estimation of Loss.—The court need only make a reasonable estimate of the loss. The sentencing judge is in a unique position to assess the evidence and estimate the loss based upon that evidence. For this reason, the court's loss determination is entitled to appropriate deference. See 18 U.S.C. 3742(e) and (f).

The estimate of the loss shall be based on available information, taking into account, as appropriate and practicable under the circumstances, factors such as the following:

(i) The fair market value of the property unlawfully taken or destroyed; or, if the fair market value is impracticable to determine or inadequately measures the harm, the cost to the victim of replacing that property.

(ii) The cost of repairs to damaged property.

(iii) The approximate number of victims multiplied by the average loss to each victim.

(iv) More general factors, such as the scope and duration of the offense and revenues generated by similar operations.

(D) Exclusions from Loss.—Loss shall not include the following:

(i) Interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs.

(ii) Costs to the government of, and costs incurred by victims primarily to aid the government in, the prosecution and criminal investigation of an offense.

(E) Credits Against Loss.—Loss shall be reduced by the following:

(i) The money returned, and the fair market value of the property returned and the services rendered, by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected. The time of detection of the offense is the earlier of (I) the time the offense was discovered by a victim or government agency; or (II) the time the defendant knew or reasonably should have known that the offense was detected or about to be detected by a victim or government agency.

(ii) In a case involving collateral pledged or otherwise provided by the defendant, the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing.

(F) Special Rules.—Notwithstanding subdivision (A), the following special rules shall be used to assist in determining loss in the cases indicated:

(i) Stolen or Counterfeit Credit Cards and Access Devices; Purloined Numbers and Codes.—In a case involving any counterfeit access device or unauthorized access device, loss includes any unauthorized charges made with the counterfeit access device or unauthorized access device and shall be not less than \$500 per access device. However, if the unauthorized access device is a means of telecommunications access that identifies a specific telecommunications instrument or telecommunications account (including an electronic serial number/mobile identification number (ESN/MIN) pair), and that means was only possessed, and not used, during the commission of the offense, loss shall be not less than \$100 per unused means. For purposes of this subdivision, ‘counterfeit access device’ and ‘unauthorized access device’ have the meaning given those terms in Application Note 7(A).

(ii) Government Benefits.—In a case involving government benefits (e.g., grants, loans, entitlement program payments), loss shall be considered to be not less than the value of the benefits obtained by unintended recipients or diverted to unintended uses, as the case may be. For example, if the defendant

was the intended recipient of food stamps having a value of \$100 but fraudulently received food stamps having a value of \$150, loss is \$50.

(iii) Davis-Bacon Act Violations.—In a case involving a Davis-Bacon Act violation (i.e., a violation of 40 U.S.C. 276a, criminally prosecuted under 18 U.S.C. 1001), the value of benefits shall be considered to be not less than the difference between the legally required wages and actual wages paid.

(iv) Ponzi and Other Fraudulent Investment Schemes.—In a case involving a fraudulent investment scheme, such as a Ponzi scheme, loss shall not be reduced by the money or the value of the property transferred to any individual investor in the scheme in access of that investor’s principal investment (i.e., the gain to an individual investor in the scheme shall not be used to offset the loss to another individual investor in the scheme).

(v) Certain Other Unlawful Misrepresentation Schemes.—In a case involving a scheme in which (I) services were fraudulently rendered to the victim by persons falsely posing as licensed professionals; (II) goods were falsely represented as approved by a governmental regulatory agency; or (III) goods for which regulatory approval by a government agency was required but not obtained, or was obtained by fraud, loss shall include the amount paid for the property, services or goods transferred, rendered, or misrepresented, with no credit provided for the value of those items or services.

(vi) Value of Controlled Substances.—In a case involving controlled substances, loss is the estimated street value of the controlled substances.

(3) Victim and Mass-Marketing Enhancement under Subsection (b)(2).—

(A) Definitions.—For purposes of subsection (b)(2):

(i) “Mass-marketing” means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (I) purchase goods or services; (II) participate in a contest or sweepstakes; or (III) invest for financial profit. “Mass-marketing” includes, for example, a telemarketing campaign that solicits a large number of individuals to purchase fraudulent life insurance policies.

(ii) “Victim” means (I) any person who sustained any part of the actual loss determined under subsection (b)(1); or (II) any individual who sustained bodily injury as a result of the offense. “Person” includes individuals, corporations, companies, associations,

firms, partnerships, societies, and joint stock companies.

(B) Undelivered United States Mail.—

(i) In General.—In a case in which undelivered United States mail was taken, or the taking of such item was an object of the offense, or in a case in which the stolen property received, transported, transferred, transmitted, or possessed was undelivered United States mail, “victim” means any person (I) described in subdivision (A)(ii) of this note; or (II) who was the intended recipient, or addressee, of the undelivered United States mail.

(ii) Special Rule.—A case described in subdivision (B)(i) of this note that involved a Postal Service (I) relay box; (II) collection box; (III) delivery vehicle; or (IV) satchel or cart, shall be considered to have involved 50 or more victims.

(iii) Definition.—“Undelivered United States mail” means mail that has not actually been received by the addressee or his agent (e.g., mail taken from the addressee’s mail box).

(C) Vulnerable Victims.—If subsection (b)(2)(B) applies, an enhancement under § 3A1.1(b)(2) shall not apply.

4. Enhancement for Business of Receiving and Selling Stolen Property under Subsection (b)(4).—For purposes of subsection (b)(4), the court shall consider the following non-exhaustive list of factors in determining whether the defendant was in the business of receiving and selling stolen property:

(A) The regularity and sophistication of the defendant’s activities.

(B) The value and size of the inventory of stolen property maintained by the defendant.

(C) The extent to which the defendant’s activities encouraged or facilitated other crimes.

(D) The defendant’s past activities involving stolen property.

5. Application of Subsection (b)(7).—

(A) In General.—The adjustments in subsection (b)(7) are alternative rather than cumulative. If, in a particular case, however, more than one of the enumerated factors applied, an upward departure may be warranted.

(B) Misrepresentations Regarding Charitable and Other Institutions.—Subsection (b)(7)(A) applies in any case in which the defendant represented that the defendant was acting to obtain a benefit on behalf of a charitable educational, religious, or political organization, or a government agency (regardless of whether the defendant actually was associated with the organization or government agency) when, in fact, the defendant intended to divert all or part of that benefit (e.g., for the defendant’s personal gain).

Subsection (b)(7)(A) applies, for example, to the following:

(i) A defendant who solicited contributions for a non-existent famine relief organization.

(ii) A defendant who solicited donations from church members by falsely claiming to be a fundraiser for a religiously affiliated school.

(iii) A defendant, chief of a local fire department, who conducted a public fundraiser representing that the purpose of the fundraiser was to procure sufficient funds for a new fire engine when, in fact, the defendant intended to divert some of the funds for the defendant's personal benefit.

(C) Fraud in Contravention of Prior Judicial Order.—Subsection (b)(7)(C) provides an enhancement if the defendant commits a fraud in contravention of a prior, official judicial or administrative warning, in the form of an order, injunction, decree, or process, to take or not to take a specified action. A defendant who does not comply with such a prior, official judicial or administrative warning demonstrates aggravated criminal intent and deserves additional punishment. If it is established that an entity the defendant controlled was a party to the prior proceeding that resulted in the official judicial or administrative action, and the defendant had knowledge of that prior decree or order, this enhancement applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business previously was enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, is subject to this enhancement. This enhancement does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines (e.g., a violation of a condition of release addressed in § 2J1.7 (Commission of Offense While on Release) or a violation of probation addressed in § 4A1.1 (Criminal History Category)).

(D) College Scholarship Fraud.—For purposes of subsection (b)(7)(D):

'Financial assistance' means any scholarship, grant, loan, tuition, discount, award, or other financial assistance for the purpose of financing an education.

'Institution of higher education' has the meaning given that term in section 101 of the Higher Education Act of 1954 (20 U.S.C. 1001).

(E) Non-Applicability of Enhancements.—

(i) Subsection (b)(7)(A).—If the conduct that forms the basis for an enhancement under subsection (b)(7)(A)

is the only conduct that forms the basis for an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill), do not apply that adjustment under § 3B1.3.

(ii) Subsection (b)(7)(B) and (C).—If the conduct that forms the basis for an enhancement under subsection (b)(7)(B) or (C) is the only conduct that forms the basis for an adjustment under § 3C1.1 (Obstructing or Impeding the Administration of Justice), do not apply that adjustment under § 3C1.1.

6. Sophisticated Means Enhancement under Subsection (b)(8).—

(A) Definition of United States.—For purposes of subsection (b)(8)(B), 'United States' means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

(B) Sophisticated Means Enhancement.—For purposes of subsection (b)(8)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.

(C) Non-Applicability of Enhancement.—If the conduct that forms the basis for an enhancement under subsection (b)(8) is the only conduct that forms the basis for an adjustment under § 3C1.1, do not apply that adjustment under § 3C1.1.

7. Application of Subsection (b)(9).—

(A) Definitions.—For purposes of subsection (b)(9):

'Counterfeit access device' (i) has the meaning given that term in 18 U.S.C. 1029(e)(2); and (ii) includes a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications service.

'Telecommunications service' has the meaning given that term in 19 U.S.C. 1029(e)(9).

'Device-making equipment' has the meaning given that term in 18 U.S.C. 1029(e)(6); and (ii) includes (I) any hardware or software that has been configured as described in 18 U.S.C. 1029(a)(9); and (II) a scanning receiver referred to in 18 U.S.C. 1029(a)(8).

'Scanning receiver' has the meaning given that term in 18 U.S.C. 1029(e)(8).

'Means of identification' has the meaning given that term in 18 U.S.C. 1028(d)(3), except that such means of identification shall be of an actual (i.e., not fictitious) individual, other than the defendant or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct).

'Produce' includes manufacture, design, alter, authenticate, duplicate, or assemble. 'Production' includes manufacture, design, alteration, authentication, duplication, or assembly.

'Unauthorized access device' has the meaning given that term in 18 U.S.C. 1029(e)(3).

Identification Documents.—Offenses involving identification documents, false identification documents, and means of identification, in violation of 18 U.S.C. 1028, also are covered by this guideline. If the primary purpose of the offense, under 18 U.S.C. 1028, was to violate, or assist another to violate, the law pertaining to naturalization, citizenship, or legal resident status, apply § 2L2.1 (Trafficking in a Document Relating to Naturalization) or § 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization), as appropriate, rather than this guideline.

(C) Application of Subsection (b)(9)(C)(i).—

(i) In General.—Subsection (b)(9)(C)(i) applies in a case in which a means of identification of an individual other than the defendant (or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct)) is used without that individual's authorization unlawfully to produce or obtain another means of identification.

(ii) Examples.—Examples of conduct to which subsection (b)(9)(C)(i) applies are as follows:

(I) A defendant obtains an individual's name and social security number from a source (e.g., from a piece of mail taken from the individual's mailbox) and obtains a bank loan in that individual's name. In this example, the account number of the bank loan is the other means of identification that has been obtained unlawfully.

(II) A defendant obtains an individual's name and address from a source (e.g., from a diver's license in a stolen wallet) and applies for, obtains, and subsequently uses a credit card in that individual's name. In this example, the credit card is the other means of identification that has been obtained unlawfully.

(iii) Nonapplicability of Subsection (b)(9)(C)(i).—Examples of conduct to which subsection (b)(9)(C)(i) does not apply are as follows:

(I) A defendant uses a credit card from a stolen wallet only to make a purchase. In such a case, the defendant has not used the stolen credit card to obtain another means of identification.

(II) A defendant forges another individual's signature to cash a stolen check. Forging another individual's signature is not producing another means of identification.

(D) Application of Subsection (b)(9)(C)(ii).—Subsection (b)(9)(C)(ii) applies in any case in which the offense involved the possession of 5 or more means of identification that unlawfully were produced or obtained, regardless of the number of individuals in whose name (or other identifying information) the means of identification were so produced or so obtained.

8. Chop Shop Enhancement under Subsection (b)(10).—Subsection (b)(10) provides a minimum offense level in the case of an ongoing, sophisticated operation (such as an auto theft ring or 'chop shop') to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts. 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft.

9. Gross Receipts Enhancement under Subsection (b)(12)(A).—

(A) In General.—For purposes of subsection (b)(12)(A), the defendant shall be considered to have derived more than \$1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded \$1,000,000.

(B) Definition.—'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

10. Enhancement for Substantially Jeopardizing the Safety and Soundness of a Financial Institution under Subsection (b)(12)(B).—For purposes of subsection (b)(12)(B), an offense shall be considered to have substantially jeopardized the safety and soundness of a financial institution if, as a consequence of the offense, the institution (A) became insolvent; (B) substantially reduced benefits to pensioners or insureds; (C) was unable on demand to refund fully any deposit, payment, or investment; (D) was so depleted of its assets as to be forced to merge without another institution in order to continue active operations; or (E) was placed in substantial jeopardy of any of subdivisions (A) through (D) of this note.

11. Cross Reference in Subsection (c)(3).—Subsection (c)(3) provides a cross reference to another guideline in Chapter Two (Offense Conduct) in cases in which the defendant is convicted of a general fraud statute, and the count of conviction establishes an offense more aptly covered by another guideline. Sometimes, offenses involving fraudulent statements are prosecuted under 18 U.S.C. 1001, or similarly general statute, although the offense is also covered by a more specific statute. Examples include false entries regarding currency transactions, for which § 2S1.3 (Structuring Transactions to Evade Reporting Requirements) likely would be more apt, and false statements to a customs officer, for which § 2T3.1 (Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property) likely would be more apt. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses.

12. Continuing Financial Crimes Enterprise.—If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise'.

13. Partially Completed Offenses.—In the case of a partially completed offense (e.g., an offense involving a completed theft or fraud that is part of a larger, attempted theft or fraud), the offense level is to be determined in accordance with the provisions of § 2X1.1 (Attempt, Solicitation, or Conspiracy) whether the conviction is for the substantive offense, the inchoate offense (attempt, solicitation, or conspiracy), or both. See Application Note 4 of the Commentary to § 2X1.1.

14. Multiple Count Indictments.—Some fraudulent schemes may result in multiple-count indictments, depending on the technical elements of the offense. The cumulative loss produced by a common scheme or course of conduct should be used in determining the offense level, regardless of the number of counts of conviction. See Chapter Three, Part D (Multiple Counts).

15. Departure Considerations.—

(A) Upward Departure Considerations.—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in

determining whether an upward departure is warranted:

(i) A primary objective of the offense was an aggravating, non-monetary objective. For example, a primary objective of the offense was to inflict emotional harm.

(ii) The offense caused or risked substantial non-monetary harm. For example, the offense caused physical harm, psychological harm, or severe emotional trauma, or resulted in a substantial invasion of a privacy interest (through, for example, the theft of personal information such as medical, educational, or financial records).

(iii) The offense involved a substantial amount of interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs, not included in the determination of loss for purposes of subsection (b)(1).

(iv) The offense created a risk of substantial loss beyond the loss determined for purposes of subsection (b)(1).

(v) The offense endangered the solvency or financial security of one or more victims.

(vi) In a case involving stolen information from a 'protected computer', as defined in 18 U.S.C. 1030(e)(2), the defendant sought the stolen information to further a broader criminal purpose.

(vii) In a case involving access devices or unlawfully produced or unlawfully obtained means of identification:

(I) The offense caused substantial harm to the victim's reputation or credit record, or the victim suffered a substantial inconvenience related to repairing the victim's reputation or a damaged credit record.

(II) An individual whose means of identification the defendant used to obtain unlawful means of identification is erroneously arrested or denied a job because an arrest record has been made in that individual's name.

(III) The defendant produced or obtained numerous means of identification with respect to one individual and essentially assumed that individual's identity.

(B) Downward Departure Consideration.—There may be cases in which the offense level determined under this guideline substantially overstates the seriousness of the offense. In such cases, a downward departure may be warranted.

Background: This guideline covers offenses involving theft, stolen property, property damage or destruction, fraud, forgery, and counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States).

It also covers offenses involving altering or removing motor vehicle identification numbers, trafficking in automobiles or automobile parts with altered or obliterated identification numbers, odometer laws and regulations, obstructing correspondence, the falsification of documents or records relating to a benefit plan covered by the Employment Retirement Income Security Act, and the failure to maintain, or falsification of, documents required by the Labor Management Reporting and Disclosure Act.

Because federal fraud statutes often are broadly written, a single pattern of offense conduct usually can be prosecuted under several code sections, as a result of which the offense of conviction may be somewhat arbitrary. Furthermore, most fraud statutes cover a broad range of conduct with extreme variation in severity. The specific offense characteristics and cross references contained in this guideline are designed with these considerations in mind.

The Commission has determined that, ordinarily, the sentences of defendants convicted of federal offenses should reflect the nature and magnitude of the loss caused or intended by their crimes. Accordingly, along with other relevant factors under the guidelines, loss serves as a measure of the seriousness of the offense and the defendant's relative culpability and is a principal factor in determining the offense level under this guideline.

Theft from the person of another, such as pickpocketing or non-forcible purse-snatching, receives an enhanced sentence because of the increase risk of physical injury. This guideline does not include an enhancement for thefts from the person by means of force or fear; such crimes are robberies and are covered under § 2B3.1 (Robbery).

A minimum offense level of level 14 is provided for offenses involving an organized scheme to steal vehicles or vehicle parts. Typically, the scope of such activity is substantial, but the value of the property may be particularly difficult to ascertain in individual cases because the stolen property is rapidly resold or otherwise disposed of in the course of the offense. Therefore, the specific offense characteristic of 'organized scheme' is used as an alternative to 'loss' in setting a minimum offense level.

Use of false pretenses involving charitable causes and government agencies enhances the sentences of defendants who take advantage of victims' trust in government or law enforcement agencies or the generosity and charitable motives of victims.

Taking advantage of a victim's self-interest does not mitigate the seriousness of fraudulent conduct; rather, defendants who exploit victims' charitable impulses or trust in government create particular social harm. In a similar vein, a defendant who has been subject to civil or administrative proceedings for the same or similar fraudulent conduct demonstrates aggravated criminal intent and is deserving of additional punishment for not conforming with the requirements of judicial process or orders issued by federal, state, or local administrative agencies.

Offenses that involve the use of financial transactions or financial accounts outside the United States in an effort to conceal illicit profits and criminal conduct involve a particularly high level of sophistication and complexity. These offenses are difficult to detect and require costly investigations and prosecutions. Diplomatic processes often must be used to secure testimony and evidence beyond the jurisdiction of United States courts. Consequently, a minimum offense level of level 12 is provided for these offenses.

Subsection (b)(6) implements the instruction to the Commission in section 2 of Public Law 105–101.

Subsection (b)(7)(D) implements, in a broader form, the directive in section 3 of the College Scholarship Fraud Prevention Act of 2000, Public law 106–420.

Subsection (b)(8) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.

Subsections (b)(9)(A) and (B) implement the instruction to the Commission in section 4 of the Wireless Telephone Protection Act, Public Law 105–172.

Subsection (b)(9)(C) implements the directive to the commission in section 4 of the Identity Theft and Assumption Deterrence Act of 1998, Public Law 105–318. This subsection focuses principally on an aggravated form of identity theft known as "affirmative identity theft" or "breeding", in which a defendant uses another individual's name, social security number, or some other form of identification (the "means of identification") to "breed" (i.e., produce or obtain) new or additional forms of identification. Because 18 U.S.C. 1028(d) broadly defines "means of identification", the new or additional forms of identification can include items such as a driver's license, a credit card, or a bank loan. This subsection provides a minimum offense level of level 12, in part because of the

seriousness of the offense. The minimum offense level accounts for the fact that the means of identification that were "bred" (i.e., produced or obtained) often are within the defendant's exclusive control, making it difficult for the individual victim to detect that the victim's identity has been "stolen." Generally, the victim does not become aware of the offense until certain harms have already occurred (e.g., a damaged credit rating or an inability to obtain a loan). The minimum offense level also accounts for the non-monetary harm associated with these types of offenses, much of which may be difficult or impossible to quantify (e.g., harm to the individual's reputation or credit rating, inconvenience, and other difficulties resulting from the offense). The legislative history of the Identity Theft and Assumption Deterrence Act of 1998 indicates that Congress was especially concerned with providing increased punishment for this type of harm.

Subsection (b)(11)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.

Subsection (b)(12)(A) implements, in a broader form, the instruction to the Commission in section 2507 of Public Law 101–647.

Subsection (b)(12)(B) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73.

Subsection (d) implements the instruction to the Commission in section 805(c) of Public Law 104–132."

Chapter Two, Part B is amended by striking § 2B1.3 and its accompanying commentary.

Chapter Two is amended by striking the heading of Part F, § 2F1.1 and its accompanying commentary, and § 2F1.2 and its accompanying commentary, and by adding at the end of Part B the following:

"§ 2B1.4. Insider Trading

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) If the gain resulting from the offense exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

Commentary

Statutory Provisions: 15 U.S.C. 78j and 17 CFR 240.10b–5. For additional statutory provisions(s), see Appendix A (Statutory Index).

Application Note

1. *Application of Subsection of § 3B1.3.*—(Section 3B1.3 (Abuse of

Position of Trust or Use of Special Skill) should be applied only if the defendant occupied and abused a position of special trust. Examples might include a corporate president or an attorney who misused information regarding a planned but unannounced takeover attempt. It typically would not apply to an ordinary "tippee".

Background: This guideline applies to certain violations of Rule 10b-5 that are commonly referred to as 'inside trading'. Insider trading is treated essentially as a sophisticated fraud. Because the victims and their losses are difficult if not impossible to identify, the gain, i.e., the total increase in value realized through trading in securities by the defendant and persons acting in concert with the defendant or to whom the defendant provide inside information, is employed instead of the victims' losses.

Certain other offenses, e.g., 7 U.S.C. 13(e), that involve misuse of inside information for personal gain also appropriately may be covered by this guideline."

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1 by striking subdivision (f); and by redesignating subdivisions (g) through (l) as subdivisions (f) through (k), respectively.

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 4 in the second paragraph by striking the last sentence.

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 in the fourth paragraph by striking "\$ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 5 by striking "\$ 2F1.1 (Fraud and Deceit)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 2B2.1 captioned "Application Notes" is amended in Note 1 by striking "'More than minimal planning,' 'firearm,'" and inserting "'Firearm,'".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by striking the text of Note 2 and inserting: "'Loss'" means the value of the property taken, damaged, or destroyed."

The Commentary to § 2B1.1 captioned "Application Notes" is amended by adding at the end the following:

"4. More than Minimal Planning.—'More than minimal planning' means more planning than is typical for commission of the offense in a simple form. 'More than minimal planning' also exists if significant affirmative steps

were taken to conceal the offense, other than conduct to which § 3C1.1 (Obstructing or Impeding the Administration of Justice) applies.

'More than minimal planning' shall be considered to be present in any case involving repeated acts over a period of time, unless it is clear that each instance was purely opportune. For example, checking the area to make sure no witnesses were present would not alone constitute more than minimal planning. By contrast, obtaining building plans to plot a particular course of entry, or disabling an alarm system, would constitute more than minimal planning."

Section 2B2.3(b) is amended by striking subdivision (3) and inserting the following:

"(3) If (A) the offense involved invasion of a protected computer; and (B) the loss resulting from the invasion (i) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (ii) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

The Commentary to § 2B2.3 captioned "Application Notes" is amended in Note 2 by striking "\$ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 2B3.1 captioned "Application Notes" is amended by striking the text of Note 3 and inserting: "'Loss' means the value of the property taken, damaged, or destroyed".

Section 2B3.(b) is amended by striking subdivision (1) and inserting the following:

"(1) If the greater of the amount obtained or demanded (A) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (B) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

Section 2B4.1(b) is amended by striking subdivision (1) and inserting the following:

"(1) If the greater of the value of the bribe or the improper benefit to be conferred (A) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (B) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

Section 2B5.1(b) is amended by striking subdivision (1) and inserting the following:

"(1) If the face value of the counterfeit items (A) exceeded \$2,000 but did not

exceed \$5,000, increase by 1 level; or (B) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

The Commentary to § 2B5.1 captioned "Application Notes" is amended in Note 3 by inserting "Inapplicability to Genuine but Fraudulently Altered Instruments.—" before "'Counterfeit,'"; and by striking "\$ 2F1.1 (Fraud and Deceit)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 2B5.3(b) is amended by striking subdivision (1) and inserting the following:

"(1) If the infringement amount (A) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (B) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

The Commentary to § 2B5.3 captioned "Background" is amended in the first paragraph by striking "guidelines" and inserting "guideline".

Section 2B6.1(b) is amended by striking subdivision (1) and inserting the following:

"(1) If the retail value of the motor vehicles or parts (A) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (B) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

The Commentary to § 2B6.1 captioned "Application Notes" is amended in Note 1 by striking "\$ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 2B6.1 captioned "Application Notes" is amended in Note 2 by striking "corresponding" before "number" and inserting "term 'increase by the'; and by striking "\$ 2F1.1 (Fraud and Deceit)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount".

Section 2C1.1(b) is amended by striking subdivision (2)(A) and inserting the following:

"(A) If the value of the payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest (i) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (ii) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 by striking "'Loss' is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) and includes both actual and intended loss" and inserting "'Loss', for purposes of subsection (b)(2)(A), shall be determined in accordance with Application Note 2 of the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 2C1.2(b) is amended by striking subdivision (2)(A) and inserting the following:

"(A) If the value of the gratuity (i) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (ii) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

Section 2C1.6(b) is amended by striking subdivision (1) and inserting the following:

"(1) If the value of the gratuity (i) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (ii) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

Section 2C1.7(b) is amended by striking subdivision (1)(A) and inserting the following:

"(A) If the loss to the government, or the value of anything obtained or to be obtained by a public official or others acting with a public official, whichever is greater (i) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (ii) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

The Commentary to § 2C1.7 captioned "Application Notes" is amended by striking the text of Note 3 and inserting:

"'Loss', for purposes of subsection (b)(1)(A), shall be determined in accordance with Application Note 2 of the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud)."

Section 2E5.1(b) is amended by striking subdivision (2) and inserting the following:

"(2) If the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater (A) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (B) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount."

Section 2G2.2(b)(2)(A) is amended by striking "\$ 2F1.1 (Fraud and Deceit)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 2G3.1(b)(1)(A) is amended by striking "\$ 2F1.1 (Fraud and Deceit)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 2G3.2(b)(2) is amended by striking "at § 2F1.1(b)(1)" and inserting "in § 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 2H3.3(a) is amended by striking the text of subdivision (2) and inserting: "if the conduct was theft or destruction of mail, apply § 2B1.1 (Theft, Property Destruction, and Fraud)."; and by striking subdivision (3).

The Commentary to § 2H3.3 captioned "Background" is amended by striking "\$ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) or § 2B1.3 (Property Damage or Destruction)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 2J1.1 captioned "Application Notes" is amended in Note 2 by striking "(Larceny, Embezzlement, and Other Forms of Theft)" and inserting "(Theft, Property Destruction, and Fraud)".

Section 2K1.4(a) is amended by striking the text of subdivision (3) and inserting: "2 plus the offense level from § 2B1.1 (Theft, Property Destruction, and Fraud)."; and by striking subdivision (4).

Section 2K1.4(b)(2) is amended by striking "(4)" and inserting "(3)".

Section 2N2.1(b)(1) is amended by striking "\$ 2F1.1 (Fraud and Deceit)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 2N2.1 captioned "Statutory Provisions" is amended by inserting ", 6810, 7734" after "150gg".

The Commentary to § 2N2.1 captioned "Application Notes" is amended in Note 2 by inserting "theft, property destruction, or" after "involved"; and by striking "theft, bribery, revealing trade secrets, or destruction of property" and inserting "bribery".

The Commentary to § 2N2.1 captioned "Application Notes" is amended in Note 4 by striking "\$ 2F1.1 (Fraud and Deceit)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 2N3.1(b)(1) is amended by striking "\$ 2F1.1 (Fraud and Deceit)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 2N3.1 captioned "Background" is amended by striking "the guideline for fraud and deception, § 2F1.1," and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 2Q1.6(a)(2) is amended by striking "\$ 2B1.3 (Property Damage or Destruction)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 2Q2.1(b) is amended by striking subdivision (3)(A) and inserting the following:

"(A) If the market value of the fish, wildlife, or plants (i) exceeded \$2,000 but did not exceed \$5,000, increase by 1 level; or (ii) exceeded \$5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount; or "

Section 2S1.3(a) is amended by striking "\$ 2F1.1 (Fraud and Deceit)" and inserting "\$ 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 2T1.1(b)(2) is amended by striking "concealment" and inserting "means"; and by inserting after "levels." the following: "If the resulting offense level is less than level 12, increase to level 12."

Section 2T1.1(c)(1) is amended by adding at the end the following:

"(D) If the offense involved (i) conduct described in subdivisions (A), (B), or (C) of these Notes; and (ii) both individual and corporate tax returns, the tax loss is the aggregate tax loss from the offenses added together."

Section 2T1.1(c)(2) is amended in the second paragraph by striking "Note" and inserting "Notes"; by inserting "(A)" before "If"; and by adding at the end the following:

"(B) If the offense involved (i) conduct described in subdivision (A) of these Notes; and (ii) both individual and corporate tax returns, the tax loss is the aggregate tax loss from the offenses added together."

The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 1 in the first paragraph by inserting ", except in willful evasion of payment cases under 26 U.S.C. 7201 and willful failure to pay cases under 26 U.S.C. 7203" after "penalties".

The Commentary to § 2T1.1 captioned "Application Notes" is amended by striking the text of Note 4 and inserting the following:

"Sophisticated Means Enhancement.—For purposes of subsection (b)(2), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means."

The Commentary to § 2T1.1 captioned "Application Notes" is amended by

striking the text of Note 7 and inserting the following:

"If the offense involved both individual and corporate tax returns, the tax loss is the aggregate tax loss from the individual tax offense and the corporate tax offense added together. Accordingly, in a case in which a defendant fails to report income derived from a corporation on both the defendant's individual tax return and the defendant's corporate tax return, the tax loss is the sum of (A) the unreported or diverted amount multiplied by (i) 28%; or (ii) the tax rate for the individual tax offense, if sufficient information is available to make a more accurate assessment of that tax rate; and (B) the unreported or diverted amount multiplied by (i) 34%; or (ii) the tax rate for the corporate tax offense, if sufficient information is available to make a more accurate assessment of that tax rate. For example, the defendant, the sole owner of a Subchapter C corporation, fraudulently understates the corporation's income in the amount of \$100,000 on the corporation's tax return, diverts the funds to the defendant's own use, and does not report these funds on the defendant's individual tax return. For purposes of this example, assume the use of 34% with respect to the corporate tax loss and the use of 28% with respect to the individual tax loss. The tax loss attributable to the defendant's corporate tax return is \$34,000 (\$100,000 multiplied by 34%). The tax loss attributable to the defendant's individual tax return is \$28,000 (\$100,000 multiplied by 28%). The tax loss for the offenses are added together to equal \$62,000 (\$34,000 + \$28,000)."

Section 2T1.4(b)(2) is amended by striking "concealment" and inserting "means"; and by inserting after "levels." the following: "If the resulting offense level is less than level 12, increase to level 12."

The Commentary to § 2T1.4 captioned "Application Notes" is amended by striking the text of Note 3 and inserting the following:

"Sophisticated Means.—For purposes of subsection (b)(2), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means."

Section 2T1.6(b)(1) is amended by striking "(Larceny, Embezzlement, and Other Forms of Theft)" and inserting

"(Theft, Property Destruction, and Fraud)".

Section 2T3.1(b)(1) is amended by striking "concealment" and inserting "means"; and by inserting after "levels." the following: "If the resulting offense level is less than level 12, increase to level 12."

The Commentary to § 2T3.1 captioned "Application Notes" is amended by striking the text of Note 3 and inserting the following:

"Sophisticated Means.—For purposes of subsection (b)(1), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means."

Section 2T4.1 is amended by striking the text and inserting the following:

"Tax loss (apply the greatest)"	Offense level
(A) \$2,000 or less	6
(B) More than \$2,000	8
(C) More than \$5,000	10
(D) More than \$12,500	12
(E) More than \$30,000	14
(F) More than \$80,000	16
(G) More than \$200,000	18
(H) More than \$400,000	20
(I) More than \$1,000,000	22
(J) More than \$2,500,000	24
(K) More than \$7,000,000	26
(L) More than \$20,000,000	28
(M) More than \$50,000,000	30
(N) More than \$100,000,000	32."

The Commentary to § 3B1.3 captioned "Application Notes" is amended by adding after Note 3 the following:

"4. The following additional illustrations of an abuse of a position of trust pertain to theft or embezzlement from employee pension or welfare benefit plans or labor unions:

(A) If the offense involved theft or embezzlement from an employee pension or welfare benefit plan and the defendant was a fiduciary of the benefit plan, an adjustment under this section for abuse of a position of trust will apply. "Fiduciary of the benefit plan" is defined in 29 U.S.C. 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any

discretionary authority or responsibility in the administration of such plan.

(B) If the offense involved theft or embezzlement from a labor union and the defendant was a union officer or occupied a position of trust in the union (as set forth in 29 U.S.C. 501(a)), an adjustment under this section for an abuse of a position of trust will apply."

Section 3D1.2(d) is amended in the second paragraph by striking "2B1.3" and inserting "2B1.4"; and by striking "§§ 2F1.1, 2F1.2;"

The Commentary to § 3D1.2 captioned "Application Notes" is amended in Note 6 in the third paragraph by striking ", and would include, for example, larceny, embezzlement, forgery, and fraud".

Section 3D1.3(b) is amended by striking "(e.g., theft and fraud)".

The Commentary to § 3D1.3 captioned "Application Notes" is amended in Note 3 by striking "(e.g., theft and fraud)"; and by striking the last sentence.

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended by striking Illustration 2; and by redesignating Illustrations 3 and 4 as Illustrations 2 and 3, respectively.

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in Illustration 3, as redesignated by this amendment, by striking "§ 2F1.1 (Fraud and Deceit)" and inserting "§ 2B1.1 (Theft, Property Destruction, and Fraud)"; and by striking "§ 2B4.1 or § 2F1.1" and inserting "§ 2B1.1 or § 2B4.1".

The Commentary to § 8A1.2 captioned "Application Notes" is amended in Note 3(i) by striking "§§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft), 2F1.1 (Fraud and Deceit)" and inserting "§ 2B1.1 (Theft, Property Destruction, and Fraud)".

Section 8C2.1(a) is amended by striking "2B1.3" and inserting "2B1.4"; and by striking "§§ 2F1.1, 2F1.2;"

The Commentary to § 8C2.1 captioned "Application Notes" is amended in Note 2 by striking "§ 2F1.1 (Fraud and Deceit)" each place it appears and inserting "§ 2B1.1 (Theft, Property Destruction, and Fraud)".

Appendix A (Statutory Index) is amended in the line referenced to 7 U.S.C. § 6 by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 7 U.S.C. § 6b(A) by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 7 U.S.C. § 6b(B) by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 22 U.S.C. § 1980(g) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 22 U.S.C. § 2197(n) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 22 U.S.C. § 4221 by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 25 U.S.C. § 450d by striking “, 2F1.1”;

In the line referenced to 26 U.S.C. § 7208 by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 26 U.S.C. § 7214 by inserting “2B1.1,” before “2C1.1”; and by striking “, 2F1.1”;

In the line referenced to 26 U.S.C. § 7232 by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 29 U.S.C. § 1141 by inserting “2B1.1,” before “2B3.2”; and by striking “, 2F1.1”;

In the line referenced to 38 U.S.C. § 787 by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 38 U.S.C. § 3502 by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 41 U.S.C. § 423(e) by inserting “2B1.1,” before “2C1.1”; and by striking “, 2F1.1”;

In the line referenced to 42 U.S.C. § 408 by striking “2F1.1” and inserting “2B1.1”;

By inserting after the line referenced to 42 U.S.C. § 408 the following new line:

“42 U.S.C. § 1011 2B1.1”;

In the line referenced to 42 U.S.C. § 1307(a) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 42 U.S.C. § 1307(b) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 42 U.S.C. § 1307a-7b by striking “, 2F1.1”;

In the line referenced to 42 U.S.C. § 1383(d)(2) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 42 U.S.C. § 1383a(a) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 42 U.S.C. § 1383a(b) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 42 U.S.C. § 1395nn(a) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 42 U.S.C. § 1395nn(c) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 42 U.S.C. § 1396h(a) by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 42 U.S.C. § 1713 by striking “2F1.1” and inserting “2B1.1”;

In the line referenced to 42 U.S.C. § 1760(g) by striking “, 2F1.1”;

In the line referenced to 42 U.S.C. § 1761(o)(1) by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 42 U.S.C. § 1761(o)(2) by striking "2F1.1";

In the line referenced to 42 U.S.C. § 3220(a) by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 42 U.S.C. § 3220(b) by striking "2F1.1";

In the line referenced to 42 U.S.C. § 3426 by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 42 U.S.C. § 3791 by striking "2F1.1";

In the line referenced to 42 U.S.C. § 3792 by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 42 U.S.C. § 3795 by striking "2F1.1";

In the line referenced to 42 U.S.C. § 5157(a) by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 45 U.S.C. § 359(a) by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 46 U.S.C. § 1276 by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 49 U.S.C. § 121 by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 49 U.S.C. § 11903 by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 49 U.S.C. § 11904 by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 49 U.S.C. § 14912 by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 49 U.S.C. § 16102 by striking "2F1.1" and inserting "2B1.1";

By inserting after the line referenced to 49 U.S.C. § 16104 the following new line:

"49 U.S.C. § 30170 2B1.1";

By inserting after the line referenced to 49 U.S.C. § 46312 the following new line:

"49 U.S.C. § 46317(a) 2B1.1";

In the line referenced to 49 U.S.C. § 60123(d) by striking "2B1.3" and inserting "2B1.1";

In the line referenced to 49 U.S.C. § 80116 by striking "2F1.1" and inserting "2B1.1";

In the line referenced to 49 U.S.C. § 80501 by striking "2B1.3" and inserting "2B1.1"; and

In the line referenced to 49 U.S.C. App. § 1687(g) by striking "2B1.3" and inserting "2B1.1".

Reason for Amendment: This "Economic Crime Package" is a six-part amendment that is the result of Commission study of economic crime issues over a number of years. The

major parts of the amendment are: (1) Consolidation of the theft, property destruction, and fraud guidelines; (2) a revised, common loss table for the consolidated guideline, and a similar table for tax offenses; (3) a revised, common definition of loss for the consolidated guideline; (4) revisions to guidelines that refer to the loss table in the consolidated guideline; (5) technical and conforming amendments; and (6) amendments regarding tax loss.

Consolidation of Theft, Property Destruction, and Fraud; Miscellaneous Revisions

The first part of this amendment consolidates the guidelines for theft, § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property), property destruction, § 2B1.3 (Property Damage or Destruction), and fraud, § 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) into one guideline, § 2B1.1 (Theft, Property Destruction, and Fraud). Consolidation will provide similar treatment for similar offenses for which pecuniary harm is a major factor in determining the offense level and, therefore, decrease unwarranted sentencing disparity that may be caused by undue complexity in the guidelines. Consolidation addresses concerns raised over several years by probation officers, judges, and practitioners about the difficulties of determining for particular cases, whether to apply § 2B1.1 or § 2F1.1 and the disparate sentencing outcomes that can result depending on that decision. Commentators have noted that inasmuch as theft and fraud offenses are conceptually similar, there is no strong reason to sentence them differently.

The base offense level for the consolidated guideline is level 6. This maintains the base offense level for fraud offenses, but represents a two-level increase for theft and property destruction offenses, which prior to this amendment was level 4. The increase of two levels in the base offense levels for theft and property destruction offenses will have minimal impact for low-level theft offenses involving offenders in criminal history Category I or Category II. Commission analysis indicates that only a few defendants will move from Zone A (where probation without conditions of confinement is possible) to Zone B or Zone C, and those that are moved into a zone at higher offense levels in the Sentencing Table generally will have criminal history categories

above Category I. As a result, the Commission decided against promulgating a two-level reduction for offenses involving loss amounts less than \$2,000.

The amendment deletes the two-level enhancement for more than minimal planning previously at §§ 2B1.1(b)(4)(A) and 2F1.1(b)(2)(A). The two-fold reason for this change was to obviate the need for judicial fact-finding about this frequently occurring enhancement and to avoid the potential overlap between the more than minimal planning enhancement and the sophisticated means enhancement previously at § 2F1.1(b)(6) and now, by this amendment, at § 2B1.1(b)(8).

The amendment also eliminates the alternative prong of the more than minimal planning enhancement, at § 2F1.1(b)(2)(B) prior to this amendment, which provided a two-level increase if the offense involved more than one victim. The amendment replaces this enhancement with a specific offense characteristic for offenses that involved large numbers of victims. This change addresses three concerns. First, as a result of the consolidation, the more-than-one-victim enhancement, if retained, would apply in cases that, prior to this amendment, were not subject to such an enhancement. Second, a two-level increase in every case involving more than one victim is arguably inconsistent with the approach in subsection (b)(2) of § 3A1.1 (Hate Crime Motivation or Vulnerable Victim), which provides a two-level increase if the offense involved a large number of vulnerable victims. Third, in practice, the more than minimal planning enhancement was so closely linked with this enhancement that the decision to eliminate the former argues strongly for also eliminating the latter.

The amendment provides a two-level enhancement for offenses involving ten or more, but fewer than 50, victims, and a four-level increase for offenses involving 50 or more victims. This provision is designed to provide a measured increment that results in increased punishment for offenses involving larger numbers of victims. Its applicability to those cases in which victims, both individuals and organizations, sustain an actual loss under subsection (b)(1) or sustain bodily injury.

A special rule is provided for application of the victim enhancement for offenses involving United States mail because of (i) the unique proof problems often attendant to such offenses, (ii) the frequently significant, but difficult to quantify, non-monetary

losses in such offenses, and (iii) the importance of maintaining the integrity of the United States mail.

In addition, the amendment moves the mass-marketing enhancement into the new victim-related specific offense characteristic, as an alternative to the two-level adjustment for more than ten, but fewer than 50, victims. The provision is retained to remain responsive to the congressional directive that led to its original promulgation and reflects the Commission's expectation that most telemarketing cases, or similar mass-marketing cases, will have at least ten victims and, receive this enhancement. The mass-marketing alternative enhancement also will continue to apply in cases in which mass-marketing has been used to target a large number of persons, regardless of the number of persons who have sustained an actual loss or injury.

In addition, the amendment provides that if a victim enhancement applies, the enhancement under § 3A1.1(b)(2) for "a large number of vulnerable victims" does not also apply because the more serious conduct already would have resulted in a higher penalty level.

In response to issues raised in a circuit conflict, the amendment revises the commentary related to subsection (b)(4)(B) of § 2B1.1 to clarify the meaning of "person in the business of receiving and selling stolen property." The amendment addresses an issue that has arisen in case law regarding what conduct receives a defendant for the 4-level enhancement.

In determining the meaning of "in the business of", some circuits apply what has been termed the "fence test", under which the court must consider (1) if the stolen property was bought and sold, and (2) to what extent the stolen property transactions encouraged others to commit property crimes. Other circuits have adopted the "totality of the circumstances test" that focuses on the regularity and sophistication of the defendant's operation. Compare *United States v. Esquivel*, 919 F.2d 957 (5th Cir. 1990), with *United States v. St. Cyr*, 997 F.2d 698 (1st Cir. 1992). Under either test, courts consider the sophistication and regularity of the business as well as the control, volume, turnover, relationship with thieves, and connections with buyers. Although the factors considered by all of these circuits are similar, the approaches are different.

After consideration, the Commission adopted the totality of circumstances approach because it is more objective and more properly targets the conduct of the individual who is actually in the

business of fencing. See *United States v. St. Cyr*, *supra*.

In addition, this amendment resolves a circuit conflict regarding the scope of the enhancement in the consolidated guideline for a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency. (Prior to this amendment, the enhancement was at subsection (b)(4)(A) of § 2F1.1). The conflict concerns whether the misrepresentation enhancement applies only in cases in which the defendant does not have any authority to act on behalf of the covered organization or government agency or if it applies more broadly to cases in which the defendant has a legitimate connection to the covered organization or government agency, but misrepresents that the defendant is acting solely on behalf of that organization or agency. Compare, e.g., *United States v. Marcum*, 16 F.3d 599 (4th Cir. 1994) (enhancement appropriate even though defendant did not misrepresent his authority to act on behalf of the organization but rather only misrepresented that he was conducting an activity wholly on behalf of the organization), with *United States v. Frazier*, 53 F.3d 1105 (10th Cir. 1995) (application of the enhancement is limited to cases in which the defendant exploits the victim by claiming to have authority which in fact does not exist).

The amendment follows the broader view of the Fourth Circuit. It provides for application of the enhancement, now, by this amendment, at § 2B1.1(b)(7)(A), if the defendant falsely represented that the defendant was acting to obtain a benefit for a covered organization or agency when, in fact, the defendant intended to divert all or part of that benefit (for example, for the defendant's personal gain), regardless of whether the defendant actually was associated with the organization or government agency. The Commission determined that the enhancement was appropriate in such cases because the representation that the defendant was acting to obtain a benefit for the organization enables the defendant to commit the offense. In the case of an employee who also holds a position of trust, the amendment provides an application note instructing the court not to apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) if the same conduct forms the basis both for the enhancement and the adjustment in § 3B1.3.

The amendment implements the directive in section 3 of the College Scholarship Fraud Prevention Act of 2000, Public Law 106-420, by providing

an additional alternative enhancement that applies if the offense involves a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education. The enhancement targets the provider of the financial assistance or scholarship services, not the individual applicant for such assistance or scholarship, consistent with the intent of the legislation.

This amendment makes two minor substantive changes to the enhancement for conscious or reckless risk of serious bodily injury, now, by this amendment, at subsection (b)(11)(A). First, it increases the minimum offense level from level 13 to level 14 to promote proportionality within this guideline. For example, within the theft and fraud guidelines prior to this amendment, there were other specific offense characteristics that had a higher floor offense level than the risk of bodily injury enhancement: (1) "chop shops" (level 14); (2) jeopardizing the solvency of a financial institution (level 24); and (3) personally receiving more than \$1,000,000 from a financial institution (level 24). Second, it inserts "death" before the term "or serious bodily injury" to clarify that the risk of the greater harm also is covered. Including risk of death also provides consistency with similar provisions in other parts of the *Guidelines Manual*, where risk of death is always included with risk of serious bodily injury.

The amendment modifies the four-level increase and minimum offense level of level 24 for a defendant who personally derives more than \$1,000,000 in gross receipts from an offense that affected a financial institution, now, by this amendment, at subsection (b)(12)(A). The amendment retains the minimum offense level but reduces the four-level enhancement to two levels because of the increased offense levels that will result from the loss table for the consolidated guideline. The two-level increase was retained because elimination of the enhancement entirely would not provide an appropriate punishment for those offenders involved with losses that are in the \$1,000,000 to \$2,500,000 range of loss.

The enhancement also was modified to address issues about what it means to "affect" a financial institution and how to apply the enhancement to a case in which there are more than one financial institution involved. Accordingly, the revised provision focuses on whether the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense.

The amendment includes a new cross reference (subsection (c)(3)) that is more generally applicable and intended to apply whenever a broadly applicable fraud statute is used to reach conduct that is addressed more specifically in another Chapter Two guideline. Prior to this amendment, the fraud guideline contained an application note that instructed the user to move to another, more appropriate Chapter Two guideline, under specified circumstances. Although this note was not a cross reference, but rather a reminder of the principles enunciated in § 1B1.2, it operated like a cross reference in the sense that it required use of a different guideline.

This amendment also makes a minor revision (adding "in a broader form") to the background commentary regarding the implementation of the directive in section 2507 of Public Law 101-647, nullifying the effect of *United States v. Tomasi*, 206 F. 3d 739 (7th Cir. 2000).

Loss Tables

The amendment provides revised loss tables for this consolidated guideline and for the tax offense guidelines. A principle feature of the new tables is that they expand the previously existing one-level increments into two-level increments, thus increasing the range of losses that correspond to an individual increment, compressing the table, and reducing fact-finding. The new loss tables also provide substantial increases in penalties for moderate and higher loss amounts, even, for fraud and theft offenses, notwithstanding the elimination of the two-level enhancement for more than minimal planning. These higher penalty levels respond to comments received from the Department of Justice, the Criminal Law Committee of the Judicial Conference, and others, that the offenses sentenced under the guidelines consolidated by this amendment under-punish individuals involved with moderate and high loss amounts, relative to penalty levels for offenses of similar seriousness sentenced under other guidelines.

Some offenders accountable for relatively low dollar losses will receive slightly lower offense levels under the new loss table for the consolidated guideline because of (1) the elimination of the enhancement for more than minimal planning; (2) the change from one-level to two-level increments for increasing loss amounts; (3) the selection of the breakpoints for the loss increments (including \$5,000 as the first loss amount that results in an increase); and (4) the slope chosen for the relationship between increases in loss amount and increases in offense level at

the lower loss amounts. This amendment reflects a decision by the Commission that this effect on penalty levels at lower loss amounts is appropriate for several reasons: (1) The lower offense levels provide appropriate deterrence and punishment, generally, (2) at lower offense levels more defendants will be subject to the court's ability to fashion sentencing alternatives as appropriate (see, e.g., § 5C1.1 (Imposition of a Term of Imprisonment)); and (3) these penalty levels may facilitate the payment of restitution.

The loss table for the consolidated guideline provides the first of incremental increases for cases in which loss exceeds \$5,000, rather than \$2,000 provided previously in § 2F1.1, or \$100 provided previously in § 2B1.1. The Commission believes this will reduce the fact-finding burden on courts for less serious offenses that are generally subject to greater sentencing flexibility because of the availability of alternatives to incarceration.

The amendment also provides a revised loss table in § 2T4.1 (Tax Table) for tax offenses that ensures significantly higher penalty levels for offenses involving moderate and high tax loss in a similar manner and degree as the loss table for the consolidated guideline. The new table is designed to reflect more appropriately the seriousness of tax offenses and to maintain proportionality with the offenses sentenced under the consolidated guideline.

The tax loss table is similar to the loss table for the consolidated guideline, except it does not reduce generally any sentences for offenders involved with lower loss amounts. The tax table provides its first increment for loss at \$2,000, rather than the \$5,000 threshold under the consolidated guideline (and the \$1,700 threshold under the tax loss table prior to this amendment). These differences are intended to avoid unintended decreases that would occur otherwise. The increases in the new tax loss table for offenders involved with lower loss amounts are intended to maintain the long-standing treatment of tax offenses relative to theft and fraud offenses.

Definition of Loss

This amendment provides a new definition of loss applicable to offenses previously sentenced under §§ 2B1.1, 2B1.3, and 2F1.1. The revised definition makes clarifying and substantive revisions to the definitions of loss previously in the commentary to §§ 2B1.1 and 2F1.1, resolves a number of circuit conflicts, addresses a variety

of application issues, and promotes consistency in application.

Significantly, the new definition of loss retains the core rule that loss is the greater of actual and intended loss. The Commission concluded that, for cases in which intended loss is greater than actual loss, the intended loss is a more appropriate initial measure of the culpability of the offender. Conversely, in cases in which the actual loss is greater, that amount is a more appropriate measure of the seriousness of the offense.

A definition is provided for intended loss that is consistent with the rule regarding the interaction of actual and intended loss.

The amendment includes a resolution of the circuit conflict relating to the meaning and application of intended loss.

The amendment resolves the conflict to provide that intended loss includes unlikely or impossible losses that are intended, because their inclusion better reflects the culpability of the offender. Compare *United States v. Geever*, 226 F.3d 186 (3d Cir. 2000) (agreeing with the majority of circuits holding that impossibility is not in and of itself a limit on the intended loss for purposes of calculating sentences under the guidelines * * * impossibility does not require a sentencing court to lower its calculations of intended loss); and *United States v. Coffman*, 94 F.3d 330 (7th Cir. 1996) (rejecting the argument that a loss that cannot possibly occur cannot be intended); *United States v. Koenig*, 952 F.2d 267 (9th Cir. 1991) (holding that § 2F1.1 only requires a calculation of intended loss and does not require a finding that the intentions were realistic); *United States v. Klisser*, 190 F. 3d 34, 36 (2d Cir. 1999) (same); *United States v. Blitz*, 151 F. 3d 1002, 1010 (9th Cir. 1998) (same); *United States v. Studevent*, 116 F. 3d 1559, 1563 (D.C. Cir. 1997) (same); *United States v. Wai-Keung*, 115 F. 3d 874, 877 (11th Cir. 1997) (same), with *United States v. Galbraith*, 20 F. 3d 1054, 1059 (10th Cir. 1993) (because intended loss only includes losses that are possible, in an undercover sting operation the intended loss is zero); and *United States v. Watkins*, 994 F.2d 1192, 1196 (6th Cir. 1993) (holding that a limitation on the broad reach of the intended loss rule is that the intended loss must have been possible to be considered relevant).

Accordingly, concepts such as "economic reality" or "amounts put at risk" will no longer be considerations in the determination of intended loss. See *United States v. Bonanno*, 146 F.3d 502 (7th Cir. 1998) (holding that the relevant inquiry is how much the scheme put at

risk); and *United States v. Wells*, 127 F.3d 739 (8th Cir. 1997) (citing *United States v. Morris*, 18 F.3d 562 (8th Cir. 1994)) (holding that intended loss properly was measured by the possible loss the defendant intended, and did not hinge on actual or net loss).

This amendment also resolves differing circuit interpretations of the standard of causation applicable for actual loss, an issue that was not addressed expressly in the prior definition of actual loss. Various circuits recognized three arguably inconsistent standards for loss causation. First, § 1B1.3 (Relevant Conduct) provides that a defendant is responsible for all losses—foreseen or unforeseen—that result from the defendant's actions or that result from the foreseeable actions of co-participants. See *United States v. Sarno*, 73 F.3d 1470 (9th Cir. 1995) (holding that “[a] sentence calculated pursuant to the loss tables * * * is properly based on actual loss notwithstanding the fact that this loss may be greater than the intended, expected or foreseeable loss”), cert. denied, 518 U.S. 1020 (1996); and *United States v. Lopreato*, 83 F.3d 571 (2d Cir. 1996) (holding that in a bribery case, the defendant is responsible for all losses, foreseeable or not). A second view is premised on the fact that prior to this amendment commentary in § 2F1.1 limited the loss amount to the value of the money, property, or services unlawfully taken. See *United States v. Marlatt*, 24 F.3d 1005 (7th Cir. 1994) (refusing to count foreseeable losses in loss figure because they did not represent the actual thing taken). A third view is that the commentary's explicit inclusion of consequential damages in the loss determination for contract procurement and product substitution cases implies that only non-consequential or direct damages are included in other cases. See *United States v. Thomas*, 62 F.3d 1332 (11th Cir. 1995), cert. denied, 516 U.S. 1166 (1996) (only non-consequential or direct damages are included in loss). See also *United States v. Daddona*, 34 F.3d 163 (3d Cir.), cert. denied, 513 U.S. 1002 (1994) (holding that merely incidental or consequential damages may not be counted in computing loss); and *United States v. Newman*, 6 F.3d 623 (9th Cir. 1993) (holding that loss caused by the defendant arsonist was only the value of the property destroyed by the fire, not costs of putting out the fire).

The amendment defines “actual loss” as the “reasonably foreseeable pecuniary harm” that resulted from the offense. The amendment incorporates this causation standard that, at a minimum, requires factual causation

(often called “but for” causation) and provides a rule for legal causation (i.e., guidance to courts regarding how to draw the line as to what losses should be included and excluded from the loss determination). Significantly, the application of this causation standard in the great variety of factual contexts in which it is expected to occur appropriately is entrusted to sentencing judges.

“Pecuniary harm” is defined in a manner that excludes emotional distress, harm to reputation, and other non-economic harm, in order to foreclose the laborious effort sometimes necessary to quantify non-economic harms (as in some tort proceedings, for example).

“Reasonably foreseeable pecuniary harm” is defined to include pecuniary harms that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense. The Commission determined that this standard better ensures the inclusion in loss of those harms that reflect the seriousness of the offense and the culpability of the offender.

The definition deletes the previous rule that, by negative implication, excludes consequential damages (except in specified cases), thus resolving a circuit conflict. Compare *United States v. Izydore*, 167 F.3d 213 (5th Cir. 1999) (the fact that the Commission prescribed consequential losses in only specific fraud cases, and not others, is strong evidence that consequential damages were omitted from the general loss definition by design rather than mistake), with *United States v. Gottfried*, 58 F.3d 648 (D.C. Cir. 1995) (holding that merely incidental or consequential damages may not be counted in computing loss). The Commission decided, however, not to use the term “consequential damages,” or any similar civil law distinction between direct and indirect harms. Rather, the Commission determined that the reasonable foreseeability standard provides sufficient guidance to courts as to what type of harms are included in loss.

In addition, this amendment preserves the special provisions addressing loss in protected computer offenses and the inclusion of consequential damages in product substitution and contract procurement offenses; however, these special cases are re-characterized as rules of construction to avoid any negative implications regarding other types of offenses.

The amendment reflects a decision by the Commission that interest and

similar costs shall be excluded from loss. However, the amendment provides that a departure may be warranted in the rare case in which exclusion of interest will under-punish the offender. Thus, the rule resolves the circuit split regarding whether “bargained for” interest may be included in loss. Compare *United States v. Henderson*, 19 F.3d 917 (5th Cir.), cert. denied, 513 U.S. 877 (1994) (holding that interest should be included if the victim had a reasonable expectation of receiving interest from the transaction); *United States v. Gilberg*, 75 F.3d 15 (1st Cir. 1996) (including in loss interest on fraudulently procured mortgage loan); and *United States v. Sharma*, 190 F.3d 220 (3d Cir. 1999) (holding that Application Note 8 of § 2F1.1 requires the exclusion of “opportunity cost” interest, but did not intend to exclude bargained-for interest), with *United States v. Hoyle*, 33 F.3d 415 (4th Cir. 1994), cert. denied, 513 U.S. 1133 (1995) (excluding interest from the determination of loss for sentencing purposes); and *United States v. Guthrie*, 144 F.3d 1006 (6th Cir. 1998) (holding that when the defendant concealed assets in a bankruptcy proceeding, the lower court's determination that loss to creditors included interest was erroneous). This rule is consistent with the general purpose of the loss determination to serve as a rough measurement of the seriousness of the offense and culpability of the offender and avoids unnecessary litigation regarding the amount of interest to be included.

The loss definition also excludes from loss certain costs incurred by the government and victims in connection with criminal investigation and prosecution of the offense. Such losses are likely to occur in a broad range of cases, would present a fact-finding burden in those cases, and would not contribute to the ability of loss to perform its essential function.

The loss definition also provides for the exclusion from loss of certain economic benefits transferred to victims, to be measured at the time of detection. This provision codifies the “net loss” approach that has developed in the case law, with some modifications made for policy reasons. This crediting approach is adopted because the seriousness of the offense and the culpability of a defendant is better determined by using a net approach. This approach recognizes that the offender who transfers something of value to the victim(s) generally is committing a less serious offense than an offender who does not.

The amendment adopts "time of detection" as the most appropriate and least burdensome time for measuring the value of the transferred benefits. The Commission determined that valuing such benefits at the time of transfer would be especially problematic in cases in which the offender misrepresented the value of an item that is difficult to value. Although the time of detection standard will allow some fluctuation in value which may inure to the defendant's benefit or detriment, the Commission determined that, because the time of detection is closer in time to the sentencing and occurs at a point when the authorities are aware of the criminality, its use generally would make it easier to determine a more accurate value of the benefit.

The definition of "time of detection" was adopted because there may be situations in which it is difficult to prove that the defendant knew the offense was detected even if it was already discovered. In addition, the words "about to be detected" are included to cover those situations in which the offense is not yet detected, but the defendant knows it is about to be detected. In such a case, it would be inappropriate to credit the defendant with benefits transferred to the victim after that defendant's awareness.

The definition of "loss" also provides special rules for certain schemes. One rule includes in loss (and excludes from crediting) the benefits received by victims of persons fraudulently providing professional services. This rule reverses case law that has allowed crediting (or exclusion from loss) in cases in which services were provided by persons posing as attorneys and medical personnel. See *United States v. Maurello*, 76 F.3d 1304 (3d Cir. 1996) (calculating loss by subtracting the value of satisfactory legal services from amount of fees paid to a person posing as a lawyer); and *United States v. Reddeck*, 22 F.3d 1504 (10th Cir. 1994) (reducing loss by the value of education received from a sham university). The Commission determined that the seriousness of these offenses and the culpability of these offenders is best reflected by a loss determination that does not credit the value of the unlicensed benefits provided. In addition, this provision eliminates the additional burden that would be imposed on courts if required to determine the value of these benefits.

Similarly, the definition of loss provides a special rule that includes in loss (and excludes from crediting) the value of items that were falsely represented as approved by a regulatory agency, for which regulatory approval

was obtained by fraud, or for which regulatory approval was required but not obtained. The Commission determined that the seriousness of these offenses and the culpability of these offenders is best reflected by a loss determination that does not credit the value of these items. This decision reflects the importance of the regulatory approval process to public health, safety, and confidence.

Regarding investment schemes, the amendment resolves a circuit conflict regarding whether and how to credit payments made to victims. Compare *United States v. Mucciante*, 21 F.3d 1228 (2d Cir. 1994) (under the Guidelines, loss includes the value of all property taken, even though all or part of it was returned.); *United States v. Deavours*, 219 F.3d 400 (5th Cir. 2000) (intended loss is not reduced by any sums returned to investors); and *United States v. Loayza*, 107 F.3d 257 (4th Cir. 1997) (declining to follow the approach of net loss and holding defendants responsible for the value of all property taken, even though all or a part is returned), with *United States v. Holiusa*, 13 F.3d 1043 (7th Cir. 1994) (holding that only the net loss should be included in loss, thus allowing a credit for returned interest), and *United States v. Orton*, 73 F.3d 331 (11th Cir. 1996) (only payments made to losing investors should be credited, not payments to investors who made a profit).

This amendment adopts the approach of the Eleventh Circuit that excludes the gain to any individual investor in the scheme from being used to offset the loss to other individual investors because any gain realized by an individual investor is designed to lure others into the fraudulent scheme. See *United States v. Orton*, *supra*.

The definition retains the rule providing for the use of gain when loss cannot reasonably be determined. It clarifies that there must be a loss for gain to be considered. In doing so, the Commission resolved another circuit conflict. Compare *United States v. Robie*, 166 F.3d 444 (2d Cir. 1999) (holding that use of defendant's gain for purposes of subsection (b)(1) is improper if there is no economic loss to the victim), with *United States v. Haas*, 171 F.3d 259 (5th Cir. 1999) (stating that "if the loss is either incalculable or zero, the district court must determine the § 2F1.1 sentence enhancement by estimating the gain to the defendant as a result of his fraud"). The Commission decided not to expand the use of gain to situations in which loss can be determined but the gain is greater than the loss because such instances should occur infrequently, the efficiency of the

criminal operation as reflected in the amount of gain ordinarily should not determine the penalty level, and the traditional use of loss is generally adequate.

The amendment revises the special rule on determining loss in cases involving diversion of government program benefits to resolve another circuit conflict. The revision is intended to clarify that loss in such cases only includes amounts that were diverted from intended recipients or uses, not benefits received or used by authorized persons. In other words, even if such benefits flowed through an unauthorized intermediary, as long as they went to intended recipients for intended uses, the amount of those benefits should not be included in loss. Compare *United States v. Henry*, 164 F.3d 1304 (10th Cir. 1999) (holding that loss includes the value of gross benefits paid, rather than the value of benefits improperly received or diverted in determining the loss), with *United States v. Peters*, 59 F.3d 732 (8th Cir. 1995) (determining that loss is the value of benefits diverted from intended recipients); and *United States v. Barnes*, 117 F.3d 328 (7th Cir. 1997) (holding that the sentence is calculated only on the value of the government benefits diverted from intended recipients or users). This net loss approach is more consistent with general rules for determining loss.

Referring Guidelines for Theft and Fraud

The amendment includes revisions to the guidelines that, prior to this amendment, referred to the loss tables in § 2B1.1 or § 2F1.1. Pursuant to this amendment, these guidelines will refer to the loss tables in the consolidated guideline. Prior to this amendment, the referring guidelines used the tables in §§ 2B1.1 and 2F1.1, which provided the first loss increment for losses in excess of \$2,000. Because the consolidated loss table provides the first loss increment for losses in excess of \$5,000, the referring guidelines are amended to provide a one-level increase in a case in which the loss is more than \$2,000, but did not exceed \$5,000. This increase is provided to avoid a one-level decrease that would otherwise occur for an offense involving losses of more than \$2,000 but not more than \$5,000.

Two referring guidelines (§§ 2B2.1 (Burglary of a Residence or a Structure Other than a Residence) and 2B3.1 (Robbery)) that use the definition of loss previously in § 2B1.1 will retain that definition of loss rather than the new loss definition in the consolidated guideline. The existing definition has

not proven problematic for cases sentenced under these guidelines.

Technical and Conforming Amendments

The amendment includes a number of technical and conforming amendments, most of which are necessitated by the consolidation and the deletion of the more than minimal planning enhancement.

Computing Tax Loss

This amendment addresses several issues related to tax loss. It addresses a circuit conflict regarding how tax loss under § 2T1.1 (Tax Evasion) is computed for cases that involve a defendant's under-reporting of income on both individual and corporate tax returns. Such a case often arises when (1) the defendant fails to report, and pay corporate income taxes on, income earned by the corporation; (2) the defendant diverts that unreported corporate income for the defendant's personal use; and (3) the defendant fails to report, and to pay personal income taxes on, that diverted income. The amendment provides that the amount of the federal tax loss is the sum of the federal income tax due from the corporation and the amount of federal income tax due from the individual.

The amendment thereby resolves a circuit conflict as to the methodology used to calculate tax loss in cases involving a corporate diversion. Two circuits use a sequential method to aggregate the tax loss. Under this method, the court determines the corporate federal income tax that would have been due, subtracts that amount from the amount diverted to the defendant personally, then determines the personal federal income tax that would have been due on the reduced diverted amount. See *United States v. Harvey*, 996 F.2d 919 (7th Cir. 1993); and *United States v. Martinez-Rios*, 143 F.3d 662 (2d Cir. 1998). The Commission adopted the alternative method used in *United States v. Cseplo*, 42 F.3d 360 (6th Cir. 1994), in which the court determines the corporate federal income tax due on the diverted amount, and adds that amount to the personal federal income tax due on the total amount diverted. This clarifies the prior rule in Application Note 7 of § 2T1.1 that "if the offense involves both individual and corporate tax returns, the tax loss is the aggregate tax loss from the offenses taken together" and reflects the Commission's conclusion that, in cases of corporate diversions, the method for computing total tax loss adopted by the Sixth Circuit in *Cseplo* more accurately reflects the seriousness of the total harm

caused by these offenses than would be reflected by the alternative method.

In evasion-of-payment tax cases, the Commission amended the definition of "tax loss" to include interest and penalties because, in contrast to evasion-of-assessment tax cases, such amounts appropriately are included in tax loss for such cases. This amendment limits the inclusion of interest or penalties to willful evasion of payment cases under 26 U.S.C. 7201 and willful failure to pay cases under 26 U.S.C. 7203. The nature of these cases is such that the interest and penalties often greatly exceed the assessed tax amount constituting the bulk of the harm associated with these offenses.

This amendment also revises the sophisticated concealment enhancement in subsection (b)(2) of §§ 2T1.1 (Tax Evasion) and 2T1.4 (Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud) to conform to the sophisticated means enhancement in the consolidated guideline, including imposition of a minimum offense level of level 12. This revision is appropriate inasmuch as certain tax offenses can be committed using sophisticated means in addition to being concealed in a sophisticated manner. Indeed, tax offenses committed in a sophisticated manner are more serious offenses, and reflect a greater culpability on the part of the offender (just as a tax offense concealed in a sophisticated manner reflects greater culpability). Consequently, this revision will allow the enhancement to apply to a somewhat greater range of tax offenses than the previously existing sophisticated concealment enhancement.

In addition, the amendment revises "offshore bank accounts" by substituting "financial" for "bank", to ensure that the enhancement applies to conduct involving similar kinds of accounts, consistent with language in § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity). A similar revision is made in § 2B1.1.

6. *Amendment:* Section 2B5.1(b)(2) is amended by inserting "(A)" after "defendant"; and by striking ", and the offense level as determined above is less than 15, increase to level 15." and inserting "; or (B) controlled or possessed (i) counterfeiting paper similar to a distinctive paper; or (ii) a feature or device essentially identical to a distinctive counterfeit deterrent, increase by 2 levels."

Section 2B5.1(b) is amended by redesignating subdivisions (3) and (4) as subdivisions (4) and (5), respectively;

and by inserting after subdivision (2) the following:

"(3) If subsection (b)(2)(A) applies, and the offense level determined under that subsection is less than level 15, increase to level 15."

The Commentary to § 2B5.1 captioned "Statutory Provisions" is amended by inserting "A" after "474".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by striking Note 1 and inserting the following:

"1. Definitions.—For purposes of this guideline:

'Distinctive counterfeit deterrent' and 'distinctive paper' have the meaning given those terms in 18 U.S.C. 474A(c)(2) and (1), respectively.

'United States' means each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa."

The Commentary to § 2B5.1 captioned "Application Notes" is amended in Note 2 by inserting "Applicability to Counterfeit Bearer Obligations of the United States.—" before "This guideline".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by striking Note 4 and inserting the following:

"4. Inapplicability to Certain Obviously Counterfeit Items.— Subsection (b)(2)(A) does not apply to persons who produce items that are so obviously counterfeit that they are unlikely to be accepted even if subjected to only minimal scrutiny."

The Commentary to § 2B5.1 captioned "Background" is amended by striking "(b)(3)" and inserting "(b)(4)".

Reason for Amendment: The frequency of counterfeiting offenses has increased significantly since 1995 due to the increasing affordability and availability of personal computers and digital printers. This amendment addresses concerns raised by the Department of the Treasury and the United States Secret Service regarding both the operation of, and the penalties provided by, § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States). The amendment increases penalties for counterfeiting activity in two ways.

First, the amendment adds a two-level enhancement for manufacturing, in addition to the minimum offense level of level 15 for manufacturing. This change will ensure some degree of additional punishment for all offenders who engage in manufacturing activity.

Second, the amendment adds a two-level enhancement (which would apply

alternatively to the manufacturing enhancement) if the offense involved possessing or controlling (1) paper that is similar to a distinctive paper used by the United States for its currency, obligations, or securities; or (2) a feature or device that is essentially identical to a distinctive counterfeit deterrent used by the United States for its currency, obligations, or securities. This enhancement is justified because of the higher statutory maximum penalties under 18 U.S.C. 474A (*i.e.*, a term of imprisonment of up to 25 years compared to 10, 15, and 20 years for other counterfeiting offenses). In addition, use of paper similar to "distinctive paper" and use of features and devices essentially identical to "distinctive counterfeit deterrents" (both of which are defined in § 2B5.1 consistently with the statute) make the counterfeit item more passable and the offense more sophisticated.

In addition, the amendment deletes the language in the commentary of § 2B5.1 that suggests that the manufacturing adjustment does not apply if the defendant "merely photocopies". That commentary was intended to make the manufacturing minimum offense level of level 15 inapplicable to notes that are so obviously counterfeit that they are unlikely to be accepted. Particularly with the advent of digital technology, it cannot be said that photocopying necessarily produces a note so obviously counterfeit as to be impassible.

7. Amendment: Section 2C1.3 is amended in the title by adding "; Payment or Receipt of Unauthorized Compensation" after "Interest".

Section 2C1.3 is amended by adding after subsection (b) the following:

"(c) Cross Reference.

(1) If the offense involved a bribe or gratuity, apply § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than the offense level determined above."

The Commentary to § 2C1.3 captioned "Statutory Provisions" is amended by inserting ", 209, 1909" after "208".

The Commentary to § 2C1.3 captioned "Application Note" is amended in Note 1 by inserting "Abuse of Position of Trust—" before "Do not".

The Commentary to § 2C1.3 is amended by striking the background.

Chapter Two, Part C is amended by striking § 2C1.4 and its accompanying commentary. Section 8C2.1(a) is amended by striking "2C1.4."

Reason for Amendment: The amendment (1) consolidates §§ 2C1.3 (Conflict of Interest) and 2C1.4 (Payment or Receipt of Unauthorized Compensation) covering payments to obtain public office, to promote ease of application; and (2) adds a cross reference in § 2B1.1 (Theft, Property Destruction, and Fraud) to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) to account for aggravating conduct often occurring in offenses involving the unlawful supplementation of the salary of various federal officials and employees committed in violation of 18 U.S.C. 209.

The amendment simplifies guideline operation by consolidating §§ 2C1.3 and 2C1.4. Consolidation is appropriate because the gravamen of the offenses covered by §§ 2C1.3 and 2C1.4 is similar: unauthorized receipt of a payment in respect to an official act. The cross reference to § 2C1.1 or § 2C1.2 was added by this amendment because the cases to which these guidelines apply usually involve a conflict of interest offense that is associated with a bribe or gratuity.

8. Amendment: Section 2D1.1(b)(5) through (7), Notes 20 and 21 of the Commentary to § 2D1.1 captioned "Application Notes", the ninth and tenth paragraphs of the Commentary to § 2D1.1 captioned "Background", and § 2D1.10, effective December 16, 2001 (see USSC Guidelines Manual Supplement to the 2000 Supplement to Appendix C, Amendment 608), are repromulgated with the following changes:

Section 2D1.1(b) is amended by striking subdivision (5); by redesignating subdivisions (6) and (7) as subdivisions (5) and (6), respectively; by redesignating subdivisions (5)(A) and (5)(B), as redesignated by this amendment, as subdivisions (5)(B) and (5)(C), respectively; and by inserting before subdivision (5)(B), as redesignated by this amendment, the following:

"(A) If the offense involved (i) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (ii) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels."

Section 2D1.1(b)(5)(B), as redesignated by this amendment, is amended by striking "subsection (b)(6)(B)" and inserting "subdivision (C)".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by

striking Note 20 and inserting the following:

"20. Hazardous or Toxic Substances."—Subsection (b)(5)(A) applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d); the Federal Water Pollution Control Act, 33 U.S.C. 1319(c); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(b); or 49 U.S.C. § 5124 (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material). In some cases, the enhancement under subsection (b)(5)(A) may not account adequately for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of probation and supervision under §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release), respectively, any costs of environmental cleanup and harm to individuals or property shall be considered by the court in cases involving the manufacture of amphetamine or methamphetamine and should be considered by the court in cases involving the manufacture of a controlled substance other than amphetamine or methamphetamine. See 21 U.S.C. 853(q) (mandatory restitution for cleanup costs relating to the manufacture of amphetamine and methamphetamine)."

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 21(A) by striking "(b)(6)" and inserting "(b)(5)(B) or (C)"; by striking "may consider factors such as the following" and inserting "shall include consideration of the following factors"; by striking "or" after "at the laboratory," and inserting "and"; by striking "or" after "disposed," and inserting "and"; by striking "or" after "the offense" and inserting "and"; by striking "amphetamine or methamphetamine"; and by inserting "whether the laboratory is located" after "e.g.,".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 21(B) by striking "(b)(6)(B)" and inserting "(b)(5)(C)".

The Commentary to § 2D1.1 captioned "Background" is amended in the ninth paragraph by inserting "(A)" after "(b)(5)"; and in the tenth paragraph by striking "Subsection (b)(6) implements" and inserting "Subsections (b)(5)(B) and (C) implement, in a broader form,"; and by striking "878" and inserting "310".

The Commentary to § 2D1.10 captioned "Application Note" is amended in Note 1 by striking "may consider factors such as the following" and inserting "shall include consideration of the following factors"; by striking "or" after "at the laboratory," and inserting "and"; by striking "or" after "disposed," and inserting "and"; by striking "or" after "the offense" and inserting "and"; by striking "amphetamine or methamphetamine"; and by inserting "whether the laboratory is located" after "e.g.,".

The Commentary to § 2D1.10 captioned "Background" is amended by striking "878" and inserting "310".

Reason for Amendment: The Commission promulgated an emergency amendment addressing the directive in section 102 (the "substantial risk directive") of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106-310 (the "Act"), with an effective date of December 16, 2000. (See USSC Guidelines Manual Supplement to the 2000 Supplement to Appendix C, Amendment 608.) This amendment repromulgates the emergency amendment, with modifications, as a permanent amendment.

The substantial risk directive instructs the Commission to amend the federal sentencing guidelines with respect to any offense relating to the manufacture, attempt to manufacture, or conspiracy to manufacture amphetamine or methamphetamine in (1) the Controlled Substances Act, 21 U.S.C. 801-90; (2) the Controlled Substances Import and Export Act, 21 U.S.C. 951-71; or (3) the Maritime Drug Law Enforcement Act, 46 U.S.C. App. 1901-04.

The Act requires the Commission, in carrying out the substantial risk directive, to provide the following enhancements—

(A) if the offense created a substantial risk of harm to human life (other than a life described in subparagraph (B)) or the environment, increase the base offense level for the offense—

(i) by not less than 3 offense levels above the applicable level in effect on the date of the enactment of this Act; or

(ii) if the resulting base offense level after an increase under clause (i) would be less than level 27, to not less than level 27; or

(B) if the offense created a substantial risk of harm to the life of a minor or incompetent, increase the base offense level for the offense—

(i) by not less than 6 offense levels above the applicable level in effect on the date of the enactment of this Act; or

(ii) if the resulting base offense level after an increase under clause (i) would be less than level 30, to not less than level 30.

The emergency amendment provided enhancements in §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and 2D1.10 (Endangering Human Life While Illegally Manufacturing a Controlled Substance) that also apply in the case of an attempt or a conspiracy to manufacture amphetamine or methamphetamine. The amendment did not amend § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) or § 2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment). Although offenses that involve the manufacture of amphetamine or methamphetamine also are referenced in Appendix A (Statutory Index) to §§ 2D1.11 and 2D1.12, the cross references in these guidelines, which apply if the offense involved the manufacture of a controlled substance, will result in application of § 2D1.1 and accordingly, the enhancements.

The basic structure of the emergency amendment to §§ 2D1.1 and 2D1.10 tracked the structure of the substantial risk directive. Accordingly, in § 2D1.1, the amendment provided a three-level increase and a minimum offense level of level 27 if the offense (1) involved the manufacture of amphetamine or methamphetamine; and (2) created a substantial risk of harm either to human life or the environment. For offenses that created a substantial risk of harm to the life of a minor or an incompetent, the amendment provided a six-level increase and a minimum offense level of level 30.

However, the structure of the emergency amendment to § 2D1.10 differed from the structure of the emergency amendment to § 2D1.1 with respect to the first prong of the enhancement (regarding substantial risk of harm to human life or to the environment). Specifically, the emergency amendment provided a three-level increase and a minimum offense level of level 27 if the offense involved the manufacture of amphetamine or methamphetamine without making application of the

enhancement dependent upon whether the offense also involved a substantial risk of either harm to human life or the environment. Consideration of whether the offense involves a substantial risk of harm to human life also is unnecessary because § 2D1.10 applies only to convictions under 21 U.S.C. 858, and the creation of a substantial risk of harm to human life is an element of an offense under 21 U.S.C. 858. Therefore, the base offense level already takes into account the substantial risk of harm to human life. Consideration of whether the offense involved a substantial risk of harm to the environment was unnecessary because the directive predicated application of the enhancement on substantial risk of harm either to human life or to the environment, and the creation of a substantial risk of harm to human life necessarily is taken into account as an element of the offense.

Neither the substantial risk directive nor any statutory provision defines "substantial risk of harm." Based on an analysis of relevant case law that interpreted "substantial risk of harm," the emergency amendment provided commentary setting forth factors that may be relevant in determining whether a particular offense created a substantial risk of harm. The definition of "incompetent" was modeled after several state statutes.

This permanent amendment repromulgates, with modifications, the emergency amendment regarding the substantial risk directive. This amendment differs from the emergency amendment in several respects:

First, in § 2D1.1, this amendment treats the existing specific offense characteristic in § 2D1.1(b)(5), relating to a two-level enhancement for environmental violations occurring in the course of a drug trafficking offense, as an alternative to the three-level enhancement for substantial risk of harm to human life or the environment. This portion of the amendment is in response to an issue related to the substantial risk directive regarding how to implement it in a manner consistent with the earlier environmental hazard directive in section 303 of the Comprehensive Methamphetamine Control Act, Pub. L. 104-237. The emergency amendment made the enhancements cumulative. However, this permanent amendment makes the new guideline provision alternative with the pre-existing enhancement for environmental hazards in § 2D1.1.

Second, in § 2D1.1, this amendment lists four factors that the court "shall", as opposed to "may", consider to determine whether subsection (b)(6)(A)

or (B) applies. Similarly, in § 2D1.10, this amendment lists four factors the court “shall” consider to determine whether subsection (b)(1)(B) applies. The list of four factors was identified by the Commission to assist the courts in defining the meaning of “substantial risk of harm” for offenses related to the production and trafficking of precursor chemicals and the manufacture of amphetamine and methamphetamine.

Third, in § 2D1.1, this amendment provides that the court (1) shall consider any costs of environmental cleanup and harm to individuals and property in cases involving the manufacture of amphetamine or methamphetamine in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of probation and supervision under §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release), and (2) should consider such costs and harms in cases involving the manufacture of a controlled substance other than amphetamine or methamphetamine.

The amendment also makes a minor technical change in the background commentary.

9. *Amendment:* The subdivision captioned “LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors)*” of the Drug Equivalency Tables of Note 10 of the Commentary to § 2D1.1 captioned “Application Notes”, effective May 1, 2001 (see USSC Guidelines Manual Supplement to the 2000 Supplement to Appendix C Amendment 609), is repromulgated without change.

Reason for Amendment: This amendment repromulgates (as a permanent amendment) without change the emergency amendment previously promulgated that addressed the directive in section 3664 of the Ecstasy Anti-Proliferation Act of 2000, Pub. L. 106–310 (the “Act”). (See USSC Guidelines Manual Supplement to the 2000 Supplement to Appendix C, Amendment 609). That directive instructs the Commission to provide increased penalties for the manufacture, importation, exportation, or trafficking of “Ecstasy”. The directive specifically requires the Commission to increase the base offense level for 3,4-Methylenedioxymethamphetamine (MDMA), 3,4-Methylenedioxyamphetamine (MDA), 3,4-Methylenedioxy-N-ethylamphetamine (MDEA), Paramethoxymethamphetamine (PMA), and any other controlled substance that is marketed as “Ecstasy” and that has either a chemical structure similar to MDMA or an effect on the central

nervous system substantially similar to or greater than MDMA.

The amendment addresses the directive by amending the Drug Equivalency Tables in § 2D1.1, Application Note 10, to increase substantially the marijuana equivalencies for the specified controlled substances, which has the effect of substantially increasing the penalties for offenses involving “Ecstasy”. The new penalties for “Ecstasy” trafficking provide penalties which, gram for gram, are more severe than those for powder cocaine. Under the Drug Equivalency Tables, one gram of powder cocaine has a marijuana equivalency of 200 grams. This amendment sets the marijuana equivalency for one gram of “Ecstasy” at 500 grams.

There is a combination of reasons why the Commission has substantially increased the penalties in response to the congressional directive. Much evidence received by the Commission indicated that “Ecstasy” (1) has powerful pharmacological effects; (2) has the capacity to cause lasting physical harms, including brain damage; and (3) is being abused by rapidly increasing numbers of teenagers and young adults. Indeed, the market for “Ecstasy” is overwhelmingly comprised of persons under the age of 25 years.

The Commission considered whether the penalty levels for “Ecstasy” should be set at the same levels as for heroin (one gram of heroin has a marijuana equivalency of 1000 grams) and decided that somewhat lesser penalties were appropriate for “Ecstasy” for a number of reasons: (1) The potential for addiction is greater with heroin; (2) heroin distribution often involves violence while, at this time, violence is not reported in “Ecstasy” markets; (3) because heroin is a narcotic and is often injected, the risk of death from overdose is much greater than for “Ecstasy”; and (4) because heroin is often injected, there are more secondary health consequences, such as infections and the transmission of the human immunodeficiency virus (HIV) and hepatitis than for “Ecstasy”.

Finally, based on information regarding “Ecstasy” trafficking patterns, the penalty levels chosen are appropriate and sufficient to target serious and high-level traffickers and to provide appropriate punishment, deterrence, and incentives for cooperation. The penalty levels chosen for “Ecstasy” offenses provide five year sentences for serious traffickers (those whose relevant conduct involved approximately 800 pills) and ten year sentences for high-level traffickers

(those whose relevant conduct involved approximately 8,000 pills).

10. *Amendment:* Section 2D1.1(b)(4) is amended by inserting “amphetamine or” before “methamphetamine” each place it appears.

The Commentary to § 2D1.1 captioned “Statutory Provisions” is amended by inserting “; 49 U.S.C. 46317(b)” after “960(a), (b)”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 19 by inserting “amphetamine or” before “methamphetamine”.

Appendix A (Statutory Index), as amended by amendment 5, is further amended by inserting after the line referenced to 49 U.S.C. 46317(a) the following new line:

“49 U.S.C. 46317(b) 2D1.1”.

The sixth entry, relating to Amphetamine and Amphetamine (actual), in each of subdivisions (1) through (14) of section 2D1.1(c), Note (B) of the “Notes to Drug Quantity Table” in § 2D1.1(c), Note 9 of the Commentary to § 2D1.1 captioned “Application Notes”, and the subdivision captioned “Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*” of the Drug Equivalency Tables in Note 10 of the Commentary to § 2D1.1 captioned “Application Notes”, effective May 1, 2001 (see USSC Guidelines Manual Supplement to the 2000 Supplement to Appendix C Supplement, Amendment 610), are repromulgated with the following change:

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned “Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*” by striking “1 gm of Dextroamphetamine = 200 gm of marijuana”.

Reason for Amendment: This amendment repromulgates as a permanent amendment the emergency amendment previously promulgated to implement the directive in section 3611 of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106–310 (the “Act”), which directs the Commission to provide increased guideline penalties for amphetamine offenses such that those penalties are comparable to the base offense level for methamphetamine offenses. The directive provided the Commission emergency amendment authority. (See USSC Guidelines Manual Supplement to the 2000 Supplement to Appendix C, Amendment 610.)

This amendment revises § 2D1.1 to include amphetamine in the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or

Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). This amendment also treats amphetamine and methamphetamine identically, at a 1:1 ratio (i.e., the same quantities of amphetamine and methamphetamine will result in the same base offense level) because of the similarities of the two substances. Specifically, amphetamine and methamphetamine (1) are chemically similar; (2) are produced by a similar method and are trafficked in a similar manner; (3) share similar methods of use; (4) affect the same parts of the brain; and (5) have similar intoxicating effects. The amendment also distinguishes between pure amphetamine (i.e., amphetamine (actual)) and amphetamine mixture in the same manner, and at the same quantities, as pure methamphetamine (i.e., methamphetamine (actual)) and methamphetamine mixture, respectively. The Commission determined that the 1:1 ratio is appropriate given the similarity of these two controlled substances.

This amendment differs from the emergency amendment in that it also (1) amends § 2D1.1(b)(4) to make the enhancement for the importation of methamphetamine applicable to amphetamine offenses as well, and makes a conforming change in the commentary to § 2D1.1 in Application Note 19; (2) deletes as unnecessary the marijuana equivalency for dextroamphetamine in the Drug Equivalency Tables in § 2D1.1; and (3) amends Appendix A (Statutory Index) to refer a new offense at 49 U.S.C. 46317(b), (prohibiting transportation of controlled substances by aircraft) to § 2D1.1.

11. *Amendment:* Section 2D1.1(c)(1) is amended by striking the period after "Hashish Oil" and inserting a semi-colon; and by adding at the end the following: "30,000,000 units or more of Schedule I or II Depressants; 1,875,000 units or more of Flunitrazepam."

Section 2D1.1(c)(2) is amended by striking the period after "Hashish Oil" and inserting a semi-colon; and by adding at the end the following: "At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants; At least 625,000 but less than 1,875,000 units of Flunitrazepam."

Section 2D1.1(c)(3) is amended by striking the period after "Hashish Oil" and inserting a semi-colon; and by adding at the end the following: "At least 3,000,000 but less than 10,000,000 units of Schedule I or II Depressants; At least 187,500 but less than 625,000 units of Flunitrazepam."

Section 2D1.1(c)(4) is amended by striking the period after "Hashish Oil" and inserting a semi-colon; and by adding at the end the following: "At least 1,000,000 but less than 3,000,000 units of Schedule I or II Depressants; At least 62,500 but less than 187,500 units of Flunitrazepam."

Section 2D1.1(c)(5) is amended by striking the period after "Hashish Oil" and inserting a semi-colon; and by adding at the end the following: "At least 700,000 but less than 1,000,000 units of Schedule I or II Depressants; At least 43,750 but less than 62,500 units of Flunitrazepam."

Section 2D1.1(c)(6) is amended by striking the period after "Hashish Oil" and inserting a semi-colon; and by adding at the end the following: "At least 400,000 but less than 700,000 units of Schedule I or II Depressants; At least 25,000 but less than 43,750 units of Flunitrazepam."

Section 2D1.1(c)(7) is amended by striking the period after "Hashish Oil" and inserting a semi-colon; and by adding at the end the following: "At least 100,000 but less than 400,000 units of Schedule I or II Depressants; At least 6,250 but less than 25,000 units of Flunitrazepam."

Section 2D1.1(c)(8) is amended by striking the period after "Hashish Oil" and inserting a semi-colon; and by adding at the end the following: "At least 80,000 but less than 100,000 units of Schedule I or II Depressants; At least 5,000 but less than 6,250 units of Flunitrazepam."

Section 2D1.1(c)(9) is amended by striking the period after "Hashish Oil" and inserting a semi-colon; and by adding at the end the following: "At least 60,000 but less than 80,000 units of Schedule I or II Depressants; At least 3,750 but less than 5,000 units of Flunitrazepam."

Section 2D1.1(c)(10) is amended in the line referenced to Schedule I or II Depressants by striking "40,000 or more" and inserting "At least 40,000 but less than 60,000"; and in the line referenced to Flunitrazepam, by striking "2,500 or more" and inserting "At least 2,500 but less than 3,750".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned "Flunitrazepam**" in the heading by striking "***" after "Flunitrazepam"; and by striking the following:

*** Provided, that the combined equivalent weight of flunitrazepam, all Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances shall not exceed 99.99 kilograms of marijuana."

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned "Schedule I or II Depressants***" in the heading by striking "****" after "Schedule I or II Depressants"; and by striking the following:

**** Provided, that the combined equivalent weight of all Schedule I or II depressants, Schedule III substances, Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed 59.99 kilograms of marijuana."

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables in the subdivision captioned "Schedule III Substances****" by striking "Schedule I or II depressants," after "Schedule III Substances."

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 17 by striking "(e.g., the maximum offense level in the Drug Quantity Table for flunitrazepam is level 20)".

Reason for Amendment: This amendment implements the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000, Pub. L. 106-172 (the "Act"), which provides the emergency scheduling of gamma hydroxybutyric acid ("GHB") as a Schedule I controlled substance under the Controlled Substances Act when the drug is used illicitly. The Act also amended section 401(b)(1)(C) of the Controlled Substances Act, 21 U.S.C. 841(b)(1)(C), and section 1010(b)(3) of the Controlled Substances Import and Export Act, 21 U.S.C. 960(b)(3), to provide penalties of not more than 20 years' imprisonment for an offense that involves GHB.

This amendment eliminates the maximum base offense level of level 20 in the Drug Quantity Table of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) for Schedule I and II depressants (including GHB). The same change is made with respect to flunitrazepam, which, for sentencing purposes, is tied to Schedule I and II depressants. The Commission determined that increased penalties for the more serious offenses involving Schedule I and II depressants are appropriate.

Corresponding changes to the Drug Equivalency Tables in § 2D1.1 were made for both Flunitrazepam and Schedule I or II depressants by eliminating the maximum marijuana equivalency when offenses involving these controlled substances also involve

offenses for controlled substances in Schedules III, IV, or V.

12. *Amendment:* Section 2D1.1(b)(6), as redesignated by amendment 8, is amended by inserting “subsection (a) of” after “(1)–(5) of”; and by striking “and the offense level determined above is level 26 or greater”.

The Commentary to § 2D1.1 captioned “Application Notes”, as amended by amendments 8, 10, and 11, is further amended by striking Note 14; and by redesignating Notes 15 through 21 as Notes 14 through 20, respectively.

Section 5C1.2 is amended in the first paragraph by striking “In” and inserting “(a) Except as provided in subsection (b), in”.

Section 5C1.2 is amended by inserting after subsection (a), as so designated by this amendment, the following:

“(b) In the case of a defendant (1) who meets the criteria set forth in subsection (a); and (2) for whom the statutorily required minimum sentence is at least five years, the offense level applicable from Chapters Two (Offense Conduct) and Three (Adjustments) shall be not less than level 17.”.

The Commentary to § 5C1.2 captioned “Application Notes” is amended in Note 2 by striking “subdivision” and inserting “subsection (a)”.

The Commentary to § 5C1.2 captioned “Application Notes” is amended in Note 3 by striking “subdivisions” and inserting “subsection (a)”;

and striking “subdivision” and inserting “subsection (a)”.

The Commentary to § 5C1.2 captioned “Application Notes” is amended in Notes 4 through 7 by striking “subdivision” each place it appears and inserting “subsection (a)”.

Reason for Amendment: This amendment expands the eligibility for the two-level reduction in subsection (b)(6) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) for persons who meet the criteria set forth in § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) to include defendants with an offense level less than level 26. The Commission determined that limiting the applicability of this reduction to defendants with an offense level of level 26 or greater is inconsistent with the general principles underlying this two-level reduction (and the related safety valve provision, see 18 U.S.C. 3553(f)) to provide lesser punishment for first time, nonviolent offenders.

This amendment also establishes in § 5C1.2 a minimum offense level of level 17 for a defendant who meets the

requirements set forth in § 5C1.2, and for whom the statutorily required minimum sentence is at least five years, in order to comply more strictly with the directive to the Commission at section 80001(b) of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322.

13. *Amendment:* The subdivision captioned “List I Chemicals (relating to the manufacture of amphetamine or methamphetamine)*****” in the Drug Equivalency Tables in Note 10 of the Commentary to § 2D1.1 captioned “Application Notes” and § 2D1.11, effective May 1, 2001 (see USSC Guidelines Manual Supplement to the 2000 Supplement to Appendix C, Amendment 611), are repromulgated with the following changes:

Section 2D1.11 is amended in the heading to subsection (d)(1) by striking “(d)(1)” before “Ephedrine,” and inserting “(d)”.

Section 2D1.11 is amended in the heading to subsection (d)(2) by striking “(d)(2)” before “Chemical” and inserting “(e)”.

Section 2D1.11(e)(1), as redesignated by this amendment, is amended by striking the period after “3, 4-Methylenedioxyphe-nyl-2-propanone” and inserting a semicolon; and by adding at the end the following: “10,000 KG or more of Gamma-butyrolactone.”.

Section 2D1.11(e)(2), as redesignated by this amendment, is amended in the subdivision captioned “List I Chemicals” by adding at the end the following: “At least 3,000 KG but less than 10,000 KG of Gamma-butyrolactone;”; and in the subdivision captioned “List II Chemicals” by striking the period after “Toluene” and inserting a semi-colon; and by adding at the end the following: “376.2 G or more of Iodine.”.

Section 2D1.11(e)(3), as redesignated by this amendment, is amended in the subdivision captioned “List I Chemicals” by adding at the end the following: “At least 1,000 KG but less than 3,000 KG of Gamma-butyrolactone;”; and in the subdivision captioned “List II Chemicals” by striking the period after “Toluene” and inserting a semi-colon; and by adding at the end the following: “At least 125.4 G but less than 376.2 G of Iodine.”.

Section 2D1.11(e)(4), as redesignated by this amendment, is amended in the subdivision captioned “List I Chemicals” by adding at the end the following: “At least 700 KG but less than 1,000 KG of Gamma-butyrolactone;”; and in the subdivision captioned “List II Chemicals” by striking the period after “Toluene” and inserting a semi-colon; and by adding at

the end the following: “At least 87.8 G but less than 125.4 G of Iodine.”.

Section 2D1.11(e)(5), as redesignated by this amendment, is amended in the subdivision captioned “List I Chemicals” by adding at the end the following: “At least 400 KG but less than 700 KG of Gamma-butyrolactone;”; and in the subdivision captioned “List II Chemicals” by striking the period after “Toluene” and inserting a semi-colon; and by adding at the end the following: “At least 50.2 G but less than 87.8 G of Iodine.”.

Section 2D1.11(e)(6), as redesignated by this amendment, is amended in the subdivision captioned “List I Chemicals” by adding at the end the following: “At least 100 KG but less than 400 KG of Gamma-butyrolactone;”; and in the subdivision captioned “List II Chemicals” by striking the period after “Toluene” and inserting a semi-colon; and by adding at the end the following: “At least 12.5 G but less than 50.2 G of Iodine.”.

Section 2D1.11(e)(7), as redesignated by this amendment, is amended in the subdivision captioned “List I Chemicals” by adding at the end the following: “At least 80 KG but less than 100 KG of Gamma-butyrolactone;”; and in the subdivision captioned “List II Chemicals” by striking the period after “Toluene” and inserting a semi-colon; and by adding at the end the following: “At least 10 G but less than 12.5 G of Iodine.”.

Section 2D1.11(e)(8), as redesignated by this amendment, is amended in the subdivision captioned “List I Chemicals” by adding at the end the following: “At least 60 KG but less than 80 KG of Gamma-butyrolactone;”; and in the subdivision captioned “List II Chemicals” by striking the period after “Toluene” and inserting a semi-colon; and by adding at the end the following: “At least 7.5 G but less than 10 G of Iodine.”.

Section 2D1.11(e)(9), as redesignated by this amendment, is amended in the subdivision captioned “List I Chemicals” by adding at the end the following:

“At least 40 KG but less than 60 KG of Gamma-butyrolactone;”; and in the subdivision captioned “List II Chemicals” by striking the period after “Toluene” and inserting a semi-colon; and by adding at the end the following: “At least 5 G but less than 7.5 G of Iodine.”.

Section 2D1.11(e)(10), as redesignated by this amendment, is amended in the subdivision captioned “List I Chemicals” by adding at the end the following: “Less than 40 KG of Gamma-butyrolactone;”; and in the subdivision

captioned "List II Chemicals" by striking the period after "Toluene" and inserting a semi-colon; and by adding at the end the following: "Less than 5 G of Iodine."

Reason for Amendment: This amendment repromulgates, with additional changes, the emergency amendment previously promulgated in response to the three-part directive in section 3651 of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106-310 (the "Act"), regarding enhanced punishment for trafficking in List I chemicals. (See Guidelines Manual Supplement to the 2000 Supplement to Appendix C, Amendment 611). That section provided the Commission emergency amendment authority to implement the directive.

This amendment provides a new chemical quantity table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) specifically for ephedrine, pseudoephedrine, and phenylpropanolamine (PPA). The table ties the base offense levels for these chemicals to the base offense levels for methamphetamine (actual) set forth in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), assuming a 50 percent actual yield of the controlled substance from the chemicals. (Methamphetamine (actual) is used rather than methamphetamine mixture because ephedrine and pseudoephedrine produce methamphetamine (actual), and PPA produces amphetamine (actual)). This yield is based on information provided by the Drug Enforcement Administration (DEA) that the typical yield of these substances for clandestine laboratories is 50 to 75 percent.

This new chemical quantity table has a maximum base offense level of level 38 (as opposed to a maximum base offense level of level 30 for all other precursor chemicals). Providing a maximum base offense level of level 38 complies with the directive to establish penalties for these precursors that "correspond to the quantity of controlled substance that reasonably could have been manufactured using the quantity of ephedrine, phenylpropanolamine, or pseudoephedrine possessed or distributed." Additionally, this eliminates the six-level distinction that currently exists between precursor chemical offenses that involve intent to manufacture amphetamine or methamphetamine and such offenses that also involve an actual attempt to

manufacture amphetamine or methamphetamine.

This amendment eliminates the Ephedrine Equivalency Table in § 2D1.11 and, in its place, provides a general rule for the court to determine the base offense level in cases involving multiple precursors (other than ephedrine, pseudoephedrine, or PPA) by using the quantity of the single chemical resulting in the greatest offense level. An upward departure is provided for cases in which the offense level does not adequately address the seriousness of the offense.

However, this amendment provides an exception to that general rule for offenses that involve a combination of ephedrine, pseudoephedrine, or PPA because these chemicals often are used in the same manufacturing process. In a case that involves two or more of these chemicals, the base offense level will be determined using the total quantity of these chemicals involved. The purpose of this exception is twofold: (1) Any of the three primary precursors in the same table can be combined without difficulty; and (2) studies conducted by the DEA indicate that because the manufacturing process for amphetamine is essentially identical to the manufacturing process for methamphetamine, there are cases in which the different precursors are included in the same batch of drugs. If the chemical is PPA, amphetamine results; if the chemical is ephedrine or pseudoephedrine, methamphetamine results.

The amendment also adds to the Drug Equivalency Tables in § 2D1.1 a conversion table for these precursor chemicals, providing for a 50 percent conversion ratio. This is based on data from the DEA that the actual yield from ephedrine, pseudoephedrine, or PPA typically is in the range of 50 to 75 percent. The purpose of this part of the amendment is to achieve the same punishment level (as is achieved by the first part of this amendment) for an offense involving any of these precursor chemicals when such offense involved the manufacture of amphetamine or methamphetamine and, as a result, is sentenced under § 2D1.1 pursuant to the cross reference in § 2D1.11.

This amendment also increases the base offense level for Benzaldehyde, Hydriodic Acid, Methylamine, Nitroethane, and Norpseudoephedrine by re-calibrating these levels to the appropriate quantity of methamphetamine (actual) that could be produced assuming a 50 percent yield of chemical to drug and retaining a cap at level 30. Previously, these chemicals had been linked to methamphetamine

(mixture) penalty levels. Based on a study conducted by the DEA, ephedrine and pseudoephedrine are the primary precursors used to make methamphetamine in the United States. Phenylpropanolamine is the primary precursor used to make amphetamine. Unlike the five additional List I chemicals, the chemical structures of ephedrine, pseudoephedrine, and PPA are so similar to the resulting drug (i.e., methamphetamine or amphetamine) that the manufacture of methamphetamine or amphetamine from ephedrine, pseudoephedrine, or PPA is a very simple one-step synthesis which anyone can perform using a variety of chemical reagents. The manufacture of methamphetamine or amphetamine from the five additional List I chemicals is a more complex process which requires a heightened level of expertise.

This amendment adds to the emergency amendment in two ways. First, it amends the Chemical Quantity Table in § 2D1.11 to include gamma-butyrolactone (GBL), a precursor for gamma hydroxybutyric acid (GHB), as a List I chemical. This change is in response to the Hillory J. Farias and Samantha Reid Date Rape Prohibition Act of 2000, Pub. L. 106-172, which added GBL to the list of List I chemicals in section 401 (b)(1)(C) of the Controlled Substances Act, 21 U.S.C. 841(b)(1)(C). Offense levels for GBL were established in the same manner as other List I chemicals. The offense level for a specific quantity of GHB that can be produced from a given quantity of GBL, assuming a 50 percent yield, was determined using the Drug Quantity Table in § 2D1.1. From this offense level, six levels were subtracted to reflect the fact that an attempt to manufacture is not a required element of these offenses and, therefore, they are less serious offenses than offenses covered by § 2D1.1.

Second, the amendment adds iodine to the Chemical Quantity Table in § 2D1.1 in response to a recent classification of iodine as a List II chemical. Iodine is used to produce hydrogen iodide which, in the presence of water, becomes hydriodic acid, a List I chemical that is a reagent used in the production of amphetamine and methamphetamine. The penalties for iodine were established based upon its conversion to hydriodic acid.

14. *Amendment:* Section 2D1.12 is amended in the title by inserting "Transportation, Exportation," after "Distribution,"; and by striking "or Equipment" and inserting "Equipment, Chemical, Product, or Material".

Section 2D1.12(a)(1), (a)(2), and (b)(1) are amended by inserting “flask,” after “prohibited” each place it appears; and by inserting “, chemical, product, or material” after “equipment” each place it appears.

The Commentary to § 2D1.12 captioned “Statutory Provisions” is amended by inserting “§” before “843”; and by inserting “, 864” after “(7)”.

The Commentary to § 2D1.12 captioned “Application Notes” is amended by striking the text of Note 1 and inserting the following:

“If the offense involved the large-scale manufacture, distribution, transportation, exportation, or importation of prohibited flasks, equipment, chemicals, products, or material, an upward departure may be warranted.”.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 21 U.S.C. § 863 the following:

“21 U.S.C. 864–2D1.12”.

Reason for Amendment: This amendment addresses the new offense, in section 423 of the Controlled Substances Act, 21 U.S.C. 864, of stealing or transporting across state lines anhydrous ammonia knowing, intending, or having reasonable cause to believe that such anhydrous ammonia will be used to manufacture a controlled substance. This new offense, created by section 3653 of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106–310, carries the statutory penalties contained in section 403(d) of the Controlled Substances Act, 21 U.S.C. 843, i.e., not more than four years’ imprisonment (or not more than eight years’ imprisonment in the case of certain prior convictions), or not more than ten years’ imprisonment (or not more than 20 years’ imprisonment in the case of certain prior convictions) if the offense involved the manufacture of methamphetamine.

The amendment references the new offense to § 2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment; Attempt or Conspiracy). Reference to this guideline is appropriate because the new offense is similar to other offenses that already are referenced to the guideline and have the same penalty structure, such as 21 U.S.C. 843(a)(6), which among other things, makes it unlawful to possess any chemical, product, or material that may be used to manufacture a controlled substance. In addition, this amendment expands the coverage of Application Note 1 to also apply to cases involving the transportation and exportation of prohibited chemicals, products, or

material. Finally, the amendment makes minor, non-substantive changes to the guideline in order to fully incorporate the new and existing offenses.

15. *Amendment:* Sections 2G1.1, 2G2.1, 2H4.1, 2H4.2, and 5E1.1, and each line in Appendix A (Statutory Index) referenced to 18 U.S.C. 241, 1589, 1590, 1591, or 1592, or to 29 U.S.C. 1851, effective May 1, 2001 (see USSC Guidelines Manual Supplement to the 2000 Supplement to Appendix C, Amendment 612), are repromulgated with the following changes:

Section 5E1.1(a)(1) is amended by inserting “, or 21 U.S.C. 853(q)” after “3663A”.

The Commentary to § 5E1.1 captioned “Background” is amended in the first paragraph by inserting “, and 21 U.S.C. 853(q)” after “3663A”.

Reason for Amendment: This amendment repromulgates as a permanent amendment the previously promulgated emergency amendment on human trafficking. (See USSC Guidelines Manual Supplement to the 2000 Supplement to Appendix C, Amendment 612.) The amendment implements the congressional directive in section 112(b) of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106–386 (the “Act”).

The directive requires the Commission to amend, if appropriate, the guidelines applicable to human trafficking (i.e., peonage, involuntary servitude, and forced labor) offenses. It also requires the Commission to ensure that the guidelines “are sufficiently stringent to deter and adequately reflect the heinous nature of these offenses.” In compliance with the directive, the amendment (1) creates a new guideline, § 2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act); (2) refers violations of four new statutes, 18 U.S.C. 1589 (Forced Labor), 1590 (Trafficking with Respect to Peonage, Involuntary Servitude or Forced Labor), 1591 (Sex Trafficking of Children by Force, Fraud or Coercion), and 1592 (Unlawful Conduct with Respect to Documents in Furtherance of Peonage, Involuntary Servitude, or Forced Labor) to the appropriate guidelines; and (3) makes changes, consistent with the directive, which both enhance sentences and reflect changes to three existing statutes: 18 U.S.C. 1581(a) (Peonage), 1583 (Enticement into Slavery) and 1584 (Sale into Involuntary Servitude).

To address this multi-faceted directive, the amendment makes changes to several existing guidelines and creates a new guideline for criminal violations of the Migrant and Seasonal Agricultural Worker Protection Act.

Although the directive instructs the Commission to amend the guidelines applicable to the Fair Labor Standards Act (29 U.S.C. 201 et. seq.), a criminal violation of the Fair Labor Standards Act is only a Class B misdemeanor. See 29 U.S.C. 216. Thus, the guidelines are not applicable to those offenses.

The amendment references the new offense at 18 U.S.C. 1591 to § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct). Section 1591 provides criminal penalties for a defendant who participates in the transporting or harboring of a person, or who benefits from participating in such a venture, with the knowledge that force, fraud, or coercion will be used to cause that person to engage in a commercial sex act or with knowledge that the person is not 18 years old and will be forced to engage in a commercial sex act. Despite the statute’s inclusion in a chapter of title 18 devoted mainly to peonage offenses, section 1591 offenses are more analogous to the offenses referenced to the prostitution guideline.

Section 1591 cases alternatively have been referred in Appendix A (Statutory Index) to § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production). This has been done in anticipation that some portion of section 1591 cases will involve forcing or coercing children to engage in commercial sex acts for the purpose of producing pornography. Such offenses, as recognized by the higher base offense level at § 2G2.1, are more serious because they both involve specific harm to an individual victim and further an additional criminal purpose, namely, commercial pornography.

The amendment maintains the view that § 2H4.1 (Peonage, Involuntary Servitude, and Slave Trade) continues to be an appropriate tool for determining sentences for violations of 18 U.S.C. 1581, 1583, and 1584. Section 2H4.1 also is designed to cover offenses under three new statutes: 18 U.S.C. 1589, 1590, and 1592. Section 1589 provides criminal penalties for a defendant who provides or obtains the labor or services of another by the use of threats of serious harm or physical restraint against a person, or by a scheme or plan intended to make the person believe that physical restraint or serious harm would result from not performing the labor or services. This statute also applies to defendants who provide or obtain labor or services of another by abusing or threatening abuse

of the law or the legal process. See 18 U.S.C. 1589.

Section 1590 provides criminal penalties for a defendant who harbors, transports, or is otherwise involved in obtaining, a person for labor or services. Section 1592 provides criminal penalties for a defendant who knowingly possesses, destroys, or removes an actual passport, other immigration document, or government identification document of another person in the course of a violation of § 1581 (peonage), § 1583 (enticement into slavery), § 1584 (sale into involuntary servitude), § 1589 (forced labor), § 1590 (trafficking with respect to these offenses), § 1591 (sex trafficking of children by force, fraud, or coercion), or § 1594(a) (attempts to violate these offenses). Section 1592 also provides criminal penalties for a defendant who, with intent to violate § 1581, § 1583, § 1584, § 1589, § 1590, or § 1591, knowingly possesses, destroys, or removes an actual passport, other immigration document, or government identification document of another person. These statutes prohibit the types of behaviors that traditionally have been sentenced under § 2H4.1.

The amendment provides an alternative, less punitive base offense level of level 18 for those who violate 18 U.S.C. 1592, an offense which limits participation in peonage cases to the destruction or wrongful confiscation of a passport or other immigration document. This alternative, lower base level reflects the lower statutory maximum sentence for section 1592 offenses (i.e., 5 years' imprisonment).

Section 2H4.1(b)(2) has been expanded to provide a four-level increase if a dangerous weapon was used and a two-level increase if a dangerous weapon was brandished or its use was threatened. Prior to this amendment, only actual use of a dangerous weapon was covered. This change reflects the directive to consider an enhancement for the use or threatened use of a dangerous weapon. The commentary to § 2H4.1 is amended to clarify that the threatened use of a dangerous weapon applies regardless of whether a dangerous weapon was actually present.

The amendment also creates a new guideline, § 2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act), in response to the directive to amend the guidelines applicable to such offenses. These offenses, which have a statutory maximum sentence of one year imprisonment for first offenses and three years' imprisonment for subsequent offenses, were not, prior to

this amendment, referred to any specific guideline. The amendment provides a base offense level of level 6 in recognition of the low statutory maximum sentences set for these cases by Congress. Further, these offenses typically involve violations of regulatory provisions. Setting the base offense level at level 6 provides consistency with guidelines for other regulatory offenses. See, e.g., §§ 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) and 2N3.1 (Odometer Laws and Regulations). Subsections (b)(1), an enhancement for bodily injury, and (b)(2), an enhancement applicable to defendants who commit the instant offense after previously sustaining a civil penalty for similar misconduct, have been established to respond to the directive that the Commission consider sentencing enhancement for this aggravated conduct. This provision addresses the Department of Justice's and the Department of Labor's concern regarding the need for enhanced penalties in cases involving prior administrative and civil adjudications.

This amendment also addresses that portion of section 112 of the Act that amends chapter 77 of title 18, United States Code, to provide mandatory restitution for peonage and involuntary servitude offenses. The amendment amends § 5E1.1 (Restitution) to include a reference to 18 U.S.C. 1593 in the guideline provision regarding mandatory restitution.

By enactment of various sentencing enhancements and encouraged upward departures for areas of concern identified by Congress, the Commission has provided for more severe sentences for perpetrators of human trafficking offenses in keeping with the conclusion that the offenses covered by this amendment are both heinous in nature and being committed with increasing frequency.

In addition, to repromulgating the emergency amendment, this amendment responds to section 3613 of the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106-310, that amends 21 U.S.C. 853(q) to provide mandatory restitution for offenses involving the manufacture of methamphetamine. Accordingly, the amendment amends § 5E1.1 (Restitution) to include a reference to 21 U.S.C. 853(q) in the guideline provision regarding mandatory restitution.

16. *Amendment:* Section 2H3.1 is amended in the title by striking "or" and inserting a semicolon; and by

inserting " ; Disclosure of Tax Return Information" after "Eavesdropping". Section 2H3.1 is amended by striking subsection (a) and inserting the following:

"(a) Base Offense Level (Apply the greater):

(1) 9; or
(2) 6, if the defendant was convicted of 26 U.S.C. 7213A or 26 U.S.C. 7216."

Section 2H3.1(b)(1) is amended by striking "conduct" and inserting "offense".

Section 2H3.1(c)(1) is amended by striking "conduct" and inserting "offense"; and by striking "that offense" and inserting "that other offense".

The Commentary to § 2H3.1 captioned "Statutory Provisions" is amended by inserting "26 U.S.C. 7213(a)(1)–(3), (a)(5), (d), 7213A, 7216;" after "2511;".

The Commentary to § 2H3.1 captioned "Application Note" is amended by striking "Note" and inserting "Notes"; by redesignating Note 1 as Note 2; and by inserting before Note 2, as redesignated by this amendment, the following:

"1. Definitions.—For purposes of this guideline, 'tax return' and 'tax return information' have the meaning given the terms 'return' and 'return information' in 26 U.S.C. 6103(b)(1) and (2), respectively."

The Commentary to § 2H3.1 captioned "Application Notes" as re-captioned by this amendment, is amended in Note 2, as redesignated by this amendment, by inserting "Satellite Cable Transmissions.—" before "If the".

The Commentary to § 2H3.1 captioned "Background" is amended by adding at the end the following additional paragraph:

"This section also refers to conduct relating to the disclosure and inspection of tax returns and tax return information, which is proscribed by 26 U.S.C. 7213(a)(1)–(3), (5), (d), 7213A, and 7216. These statutes provide for a maximum term of imprisonment of five years for most types of disclosure of tax return information, but provide a maximum term of imprisonment of one year for violations of 26 U.S.C. 7213A and 7216."

Appendix A (Statutory Index) is amended by inserting after the line referenced to 26 U.S.C. 7212(b) the following new lines:

"26 U.S.C. § 7213(a)(1) 2H3.1
26 U.S.C. § 7213(a)(2) 2H3.1
26 U.S.C. § 7213(a)(3) 2H3.1
26 U.S.C. § 7213(a)(5) 2H3.1
26 U.S.C. § 7213(d) 2H3.1
26 U.S.C. § 7213A 2H3.1";

And by inserting after the line referenced to 26 U.S.C. § 7215 the following new line:

“26 U.S.C. § 7216 2H3.1”.

Reason for Amendment: This amendment responds to the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (“the Act”). The Act created new tax offenses pertaining to the unlawful disclosure of tax-related information contained on computer software and to unlawful requests for tax audits. In addition, the Taxpayer Browsing Protection Act of 1997, Public Law 105–35, created another tax offense pertaining to the unlawful inspection of tax information.

Specifically, Public Law 105–35 expanded 26 U.S.C. 7213 to prohibit federal and state employees and certain other persons from disclosing tax-related computer software. Public Law 105–35 also created an offense at 26 U.S.C. 7213A making it unlawful for federal and state employees and certain other persons to inspect tax return information in any way other than that authorized under the Internal Revenue Code.

This is a two-part amendment. First, this amendment updates Appendix A (Statutory Index) by referring most of these offenses to § 2H3.1 (Interception of Communications and Eavesdropping). Prior to this amendment, no guideline provision or statutory reference was expressly promulgated to address tax offenses that implicated privacy interests. Under subsection (a) of § 1B1.2 (Applicable Guidelines) and under § 2X5.1 (Other Offenses), courts are required to use the most analogous offense guideline from Chapter Two (Offense Conduct) in each pending case brought under a statute having no reference in the guidelines’ statutory index.

In general, the guideline most analogous for these offenses is § 2H3.1. Section 2H3.1 concerns offenses against privacy and, in large measure, these tax-related offenses are devoted to protecting taxpayer privacy interests. Section 2H3.1 also contains a cross reference to “another offense” if a greater offense level will result.

Second, this amendment adds a three-level decrease in the base offense level under § 2H3.1 for the least serious types of offense behavior, in which there was no intent to harm or obtain pecuniary gain. The base offense level for § 2H3.1 is level 9 with a range of 4 to 10 months (in criminal history Category I). The Commission determined that a base offense level of level 9 is too severe for the misdemeanor offenses contained in 26 U.S.C. §§ 7213A (Unauthorized Inspection) and 7216 (Unauthorized Disclosure), and the three-level decrease addresses this concern.

17. Amendment: Section 2K1.3(a) is amended by striking the text of subdivision (3) and inserting the following:

“16, if the defendant (A) was a prohibited person at the time the defendant committed the instant offense; or (B) knowingly distributed explosive materials to a prohibited person; or”.

The Commentary to § 2K1.3 captioned “Statutory Provisions” is amended by inserting “(l)-(o), (p)(2),” after “(i),”.

The Commentary to § 2K1.3 captioned “Application Notes” is amended by striking the text of Note 3 and inserting the following:

“For purposes of subsection (a)(3), ‘prohibited person’ means any person described in 18 U.S.C. 842(i).”.

Section 2K2.1(a)(4)(B) is amended by striking “is” after “(i)” and inserting “was”; and by inserting “at the time the defendant committed the instant offense” after “prohibited person”.

Section 2K2.1(a)(6) is amended by striking “is” after “(A)” and inserting “was”; and by inserting “at the time the defendant committed the instant offense” after “prohibited person”.

The Commentary to § 2K2.1 captioned “Application Notes” is amended by striking the text of Note 6 and inserting the following:

“For purposes of subsections (a)(4)(B) and (a)(6), ‘prohibited person’ means any person described in 18 U.S.C. 922(g) or 922(n).”.

Reason for Amendment: This amendment makes two revisions regarding the definition of “prohibited person” in subsection (a)(3) of § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials) and subsections (a)(4)(B) and (a)(6) of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition). First, the amendment adopts the definitions of prohibited person found in specific statutes for explosive and firearm offenses. (There is no uniform statutory definition of prohibited person.) The relevant statutory provision for § 2K1.3 is 18 U.S.C. § 842(i), and the relevant statutory provisions for § 2K2.1 are 18 U.S.C. 922(g) and (n).

Second, the amendment clarifies that the pertinent alternative base offense level applies only when the offender attains the requisite status prior to committing the instant offense. This clarification is consistent with the amendment on prior felonies, which provides for increased punishment only when the offender sustains certain

felony convictions prior to committing the instant offense.

18. *Amendment:* Section 2K1.3(a)(1) is amended by striking “had at least two prior felony convictions of either a crime of violence or a controlled substance offense; or” and inserting “committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;”.

Section 2K1.3(a)(2) is amended by striking “had one prior felony conviction of either a crime of violence or a controlled substance offense; or” and inserting “committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;”.

The Commentary to § 2K1.3 captioned “Application Notes” is amended by striking the text of Note 2 and inserting the following:

“For purposes of this guideline: “Controlled substance offense” has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

“Crime of violence” has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.

“Felony conviction” means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant’s eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).”.

The Commentary to § 2K1.3 captioned “Application Notes” is amended in Note 9 by inserting before the first paragraph the following:

“For purposes of applying subsection (a)(1) or (2), use only those felony convictions that receive criminal history points under § 4A1.1(a), (b), or (c). In addition, for purposes of applying subsection (a)(1), use only those felony convictions that are counted separately under § 4A1.1(a), (b), or (c). See § 4A1.2(a)(2); § 4A1.2, comment. (n.3).”.

Section 2K2.1(a)(1) is amended by striking “had at least two prior felony convictions of either a crime of violence or a controlled substance offense; or” and inserting “committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;”.

Section 2K2.1(a)(2) is amended by striking “had at least two prior felony convictions of either a crime of violence or a controlled substance offense; or” and inserting “committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;”.

Section 2K2.1(a)(3) is amended by striking “had one prior felony conviction of either a crime of violence or controlled substance offense; or” and inserting “committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;”.

Section 2K2.1(a)(4)(A) is amended by striking “had one prior felony conviction of either a crime of violence or controlled substance offense; or” and inserting “committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or”.

Section 2K2.1(a) is amended in subdivision (4)(B) by striking “; or” after “922(d)” and inserting a semi-colon; in subdivision (5), by striking “; or” after “921(a)(30)” and inserting a semi-colon; and in subdivision (6) by striking “; or” after “§ 922(d)” and inserting a semi-colon.

The Commentary to § 2K2.1 captioned “Application Notes” is amended by striking Note 5 and inserting the following:

“5. For purposes of this guideline: “Controlled substance offense” has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

“Crime of violence” has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.

“Felony conviction” means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age

eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant’s eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).”.

The Commentary to § 2K2.1 captioned “Application Notes” is amended in Note 15 by inserting before the first paragraph the following:

“For purposes of applying subsection (a)(1), (2), (3), or (4)(A), use only those felony convictions that receive criminal history points under § 4A1.1(a), (b), or (c). In addition, for purposes of applying subsection (a)(1) and (a)(2), use only those felony convictions that are counted separately under § 4A1.1(a), (b), or (c). See § 4A1.2(a)(2); § 4A1.2, comment. (n.3).”.

Reason for Amendment: This amendment modifies subsections (a)(1) and (a)(2) of § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials) and subsections (a)(1), (a)(2), (a)(3) and (a)(4)(A) of § 2K2.1 (Unlawful Receipt, Possession or Transportation of Firearms or Ammunition) to resolve a circuit conflict regarding whether a crime committed after the commission of the instant offense and before sentencing for the instant offense is counted as a prior felony conviction for purposes of determining the defendant’s base offense level. *Compare United States v. Pugh*, 158 F.3d 1308, 1311 (D.C. Cir. 1998) (finding the guideline language ambiguous but the commentary language clear, thereby counting prior felony conviction that was sentenced prior to sentencing for the instant federal offense, even if the defendant committed the prior felony offense after the instant federal offense); *United States v. McCary*, 14 F.3d 1502, 1506 (10th Cir. 1994) (the defendant’s base offense level is to be determined on the basis of the defendant’s status as of the date the district court imposed sentence, not the date of the offense for which he had previously been convicted); and *United States v. Laihben*, 167 F.3d 1364 (11th Cir. 1999) (district court properly considered defendant’s conviction, which occurred after commission of, but before sentencing, on the federal firearms offense, in determining offense level), with *United States v. Barton*, 100 F.3d 43, 46 (6th Cir. 1996) (defendant’s state drug crime, which was committed after federal offense of being a felon in possession of firearm, could not have

been counted as prior felony conviction under § 2K2.1(a), even though defendant was convicted and sentenced on state offense prior to sentencing on federal charge; only those convictions that occur prior to the commission of the firearm offense may be counted against the defendant in determining the base offense level)) and *United States v. Oetken*, 241 F.3d 1057 (8th Cir. 2001) (only convictions that occur prior to the commission of the offense qualify as “prior convictions”).

The amendment adopts the minority view that an offense committed after the commission of any part of the offense cannot be counted as a prior felony conviction. The amendment clarifies, in § 2K1.3(a)(1) and (a)(2) and in § 2K2.1(a)(1), (a)(2), (a)(3) and (a)(4)(A), that the instant offense must have been committed subsequent to sustaining the prior felony conviction. In so doing, this amendment adopts a rule that is consistent with the requirements concerning the use of prior convictions under §§ 4B1.1 (Career Offender) and 4B1.2 (Definitions of Terms Used in Section 4B1.1).

This amendment also clarifies that in cases in which more than one prior felony conviction is required for application of the base offense level in § 2K1.3 or § 2K2.1, the prior felony convictions must be counted separately under Chapter Four (Criminal History and Criminal Livelihood).

The amendment makes nonsubstantive clarifying changes in the definitions of “controlled substance offense”, “crime of violence”, and “felony conviction” for purposes of §§ 2K1.3 and 2K2.1.

19. *Amendment:* Section 2K2.1(b)(1) is amended in the table by striking subdivisions (A) through (F) and inserting the following:

“(A) 3–7	add 2
(B) 8–24	add 4
(C) 25–99	add 6
(D) 100–199	add 8
(E) 200 or more	add 10.”.

The Commentary to § 2K2.1 captioned “Application Notes” is amended in Note 16 by striking “significantly” and inserting “substantially”; and by striking “fifty” and inserting “200”.

Reason for Amendment: This amendment responds to a recommendation from the Bureau of Alcohol, Tobacco and Firearms (ATF) to increase the penalties in § 2K2.1 (Unlawful Receipt, Possession or Transportation of Firearms or Ammunition) for offenses involving more than 100 firearms.

The amendment modifies the firearms table at § 2K2.1(b)(1), to provide enhancements in two-level increments.

Prior to this amendment, the table provided enhancements in one-level increments. This change has the effect of compressing the table by providing a wider range in each subdivision of the table for the number of firearms involved in the offense. Compressing the table in this manner diminishes some of the fact-finding required to determine how many firearms were involved in the offense and provides some increase in penalties. The amendment provides additional two-level increases for offenses that involve either 100–199 firearms, or 200 or more firearms. These increases are provided to ensure adequate and proportionate punishment in cases that involve large numbers of firearms.

The proposed amendment also makes a conforming change to Application Note 16 of § 2K2.1 regarding upward departures.

20. Amendment: Chapter Two, Part L, Subpart 1 is amended by striking § 2L1.2, and its accompanying commentary, and inserting the following:

“§ 2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after—

(A) a conviction for a felony that is (i) a drug trafficking offense for which the sentence imposed exceeded 13 months; (ii) a crime of violence; (iii) a firearms offense; (iv) a child pornography offense; (v) a national security or terrorism offense; (vi) a human trafficking offense; or (vii) an alien smuggling offense committed for profit, increase by 16 levels;

(B) a conviction for a felony drug trafficking offense for which the sentence imposed was 13 months or less, increase by 12 levels;

(C) a conviction for an aggravated felony, increase by 8 levels;

(D) a conviction for any other felony, increase by 4 levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 4 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1325(a) (second or subsequent offense only), 8 U.S.C. 1326. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. Application of Subsection (b)(1).—

(A) In General.”For purposes of subsection (b)(1):

(i) A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.

(ii) A defendant shall be considered to be deported after a conviction if the deportation was subsequent to the conviction, regardless of whether the deportation was in response to the conviction.

(iii) A defendant shall be considered to have unlawfully remained in the United States if the defendant remained in the United States following a removal order issued after a conviction, regardless of whether the removal order was in response to the conviction.

(iv) If all or any part of a sentence of imprisonment was probated, suspended, deferred, or stayed, ‘sentence imposed’ refers only to the portion that was not probated, suspended, deferred, or stayed.

(B) Definitions.—For purposes of subsection (b)(1):

(i) ‘Committed for profit’ means committed for payment or expectation of payment.

(ii) ‘Crime of violence’—

(I) means an offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another; and

(II) includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses (including sexual abuse of a minor), robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling.

(iii) ‘Drug trafficking offense’ means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

(iv) ‘Felony’ means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

(v) ‘Firearms offense’ means any of the following:

(I) An offense under federal, state, or local law that prohibits the importation, distribution, transportation, or trafficking of a firearm described in 18 U.S.C. 921, or of an explosive material as defined in 18 U.S.C. 841(c).

(II) An offense under federal, state, or local law that prohibits the possession of a firearm described in 26 5845(a), or of an explosive material as defined in 18 841(c).

(III) A violation of 18 U.S.C. 844(h).

(IV) A violation of 18 U.S.C. 924(c).

(V) A violation of 18 U.S.C. 929(a).

2. Application of Subsection

(b)(1)(C).—For purposes of subsection (b)(1)(C), ‘aggravated felony’ has the meaning given that term in 8 U.S.C. 1101(a)(43), without regard to the date of conviction of the aggravated felony.

3. Application of Subsection

(b)(1)(E).—For purposes of subsection (b)(1)(E):

(A) ‘Misdemeanor’ means any federal, state, or local offense punishable by a term of imprisonment of one year or less.

(B) ‘Three or more convictions’ means at least three convictions for offenses that (i) were separated by an intervening arrest; (ii) did not occur on the same occasion; (iii) were not part of a single common scheme or plan; or (iv) were not consolidated for trial or sentencing.

4. Aiding and Abetting, Conspiracies, and Attempts.—Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.

5. Computation of Criminal History

Points.—A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).”.

Reason for Amendment: This amendment responds to concerns raised by a number of judges, probation officers, and defense attorneys, particularly in districts along the southwest border between the United States and Mexico, that § 2L1.2 (Unlawfully Entering or Remaining in the United States) sometimes results in disproportionate penalties because of the 16-level enhancement provided in the guideline for a prior conviction for an aggravated felony. The disproportionate penalties result because the breadth of the definition of “aggravated felony” provided in 8 U.S.C. 1101(a)(43), which is incorporated into the guideline by reference, means that a defendant who previously was convicted of murder, for example, receives the same 16-level enhancement as a defendant previously convicted of simple assault. The Commission also observed that the criminal justice system has been addressing this inequity on an ad hoc basis in such cases by increased use of departures.

This amendment responds to these concerns by providing a more graduated sentencing enhancement of between 8 levels and 16 levels, depending on the seriousness of the prior aggravated

felony and the dangerousness of the defendant. In doing so, the Commission determined that the 16-level enhancement is warranted if the defendant previously was deported, or unlawfully remained in the United States, after a conviction for certain serious offenses, specifically, a drug trafficking offense for which the sentence imposed exceeded 13 months, a felony that is a crime of violence, a felony that is a firearms offense, a felony that is a national security or terrorism offense, a felony that is a human trafficking offense, and a felony that is an alien smuggling offense committed for profit. Other felony drug trafficking offenses will receive a 12-level enhancement. All other aggravated felony offenses will receive an 8-level enhancement.

This amendment also deletes an application note providing that a downward departure may be warranted based on the seriousness of the offense if the 16-level enhancement applied and (1) the defendant has previously been convicted of only one felony offense; (2) such offense was not a crime of violence or firearms offense; and (3) the term of imprisonment for such offenses did not exceed one year. The Commission determined that the graduation of the 16-level enhancement based on the seriousness of the prior conviction negated the need for this departure provision. As a result, this amendment may have the indirect result of reducing the departure rate for cases sentenced under § 2L1.2. In addition, this amendment renders moot a circuit conflict regarding whether the three criteria set forth in the application note are the exclusive basis for a downward departure from the 16-level enhancement. Compare *United States v. Sanchez-Rodriguez*, 161 F.3d 556 (9th Cir. 1998) (holding that Application Note 5 to § 2L1.2 does not limit the circumstances under which a downward departure from the 16-level enhancement is warranted); and *United States v. Alfaro-Zayas*, 196 F.3d 1338 (11th Cir. 1999) (same), with *United States v. Tappin*, 205 F.3d 536 (2d Cir. 2000) (holding that a defendant must satisfy all three criteria set forth in Application Note 5 in § 2L1.2 to receive a downward departure from the 16-level enhancement).

This amendment also makes a number of other minor changes to § 2L1.2, to provide guidance regarding the application of the enhancement for the commission of three or more prior misdemeanors and to provide definitions for terms used in the guideline.

21. Amendment: The heading to Chapter Two, Part M is amended by adding at the end “And Weapons of Mass Destruction”.

Section 2M5.1 is amended by striking subsection (a) and inserting the following:

“(a) Base Offense Level (Apply the greater):

(1) 26, if national security controls or controls relating to the proliferation of nuclear, biological, or chemical weapons or materials were evaded; or (2) 14, otherwise.”.

Section 2M5.2(a)(1) is amended by striking “22” and inserting “26”.

The heading to Chapter Two, Part M, Subpart 6 is amended by striking “Atomic Energy” and inserting “Nuclear, Biological, And Chemical Weapons And Materials, And Other Weapons of Mass Destruction”.

Chapter Two, Part M is amended by striking § 2M6.1 and inserting the following:

“§ 2M6.1. Unlawful Production, Development, Acquisition, Stockpiling, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons of Mass Destruction; Attempt or Conspiracy

(a) Base Offense Level (Apply the Greatest):

(1) 42, if the offense was committed with intent (A) to injure the United States; or (B) to aid a foreign nation or a foreign terrorist organization;

(2) 28, if subsections (a)(1) and (a)(3) do not apply; or

(3) 20, if the offense (A) involved a threat to use a nuclear weapon, nuclear material, or nuclear by-product material, a chemical weapon, a biological agent, toxin, or delivery system, or a weapon of mass destruction; but (B) did not involve any conduct evidencing an intent or ability to carry out the threat.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) or (a)(3) applies; and (B) the offense involved a threat to use, or otherwise involved (i) a select biological agent; (ii) a listed precursor or a listed toxic chemical; (iii) nuclear material or nuclear byproduct material; or (iv) a weapon of mass destruction that contains any agent, precursor, toxic chemical, or material referred to in subdivision (i), (ii), or (iii), increase by 2 levels.

(2) If (A) subsection (a)(2) applies; and (B)(i) any victim died or sustained permanent or life-threatening bodily injury, increase by 4 levels; (ii) any victim sustained serious bodily injury, increase by 2 levels; or (iii) the degree of injury is between that specified in

subdivisions (i) and (ii), increase by 3 levels.

(3) If (A) subsection (a)(2) or (a)(3) applies; and (B) the offense resulted in (i) substantial disruption of public, governmental, or business functions or services; or (ii) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by 4 levels.

(c) Cross References

(1) If the offense resulted in death, apply § 2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or § 2A1.2 (Second Degree Murder) otherwise, if the resulting offense level is greater than that determined above.

(2) If the offense was tantamount to attempted murder, apply § 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) If the defendant is convicted of a single count involving (A) conduct that resulted in the death or permanent, life-threatening, or serious bodily injury of more than one victim, or (B) conduct tantamount to the attempted murder of more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if such conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 18 U.S.C. 175, 229, 831, 842(p)(2), 2332a (only with respect to weapons of mass destruction as defined in 18 U.S.C. 2332a(c)(2)(B), (C), and (D), but including any biological agent, toxin, or vector); 42 U.S.C. 2077(b), 2122, 2131. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. Definitions.”For purposes of this guideline:

‘Biological agent’ has the meaning given that term in 18 U.S.C. 178(1).

‘Chemical weapon’ has the meaning given that term in 18 U.S.C. 229F(1).

‘Foreign terrorist organization’ (A) means an organization that engages in terrorist activity that threatens the security of a national of the United States or the national security of the United States; and (B) includes an organization designated by the Secretary of State as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1219). “National of the United States” has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

'Listed precursor or a listed toxic chemical' means a precursor or a toxic chemical, respectively, listed in Schedule I of the Annex on Chemicals to the Chemical Weapons Convention. See 18 U.S.C. 229F(6)(B), (8)(B).

'Precursor' has the meaning given that term in 18 U.S.C. 229F(6)(A). 'Toxic chemical' has the meaning given that term in 18 U.S.C. 229F(8)(A).

'Nuclear byproduct material' has the meaning given that term in 18 U.S.C. § 831(f)(2).

'Nuclear material' has the meaning given that term in 18 U.S.C. 831(f)(1).

'Select biological agent' means a biological agent or toxin identified by the Secretary of Health and Human Services on the select agent list established pursuant to section 511(d) of the Antiterrorism and Effective Death Penalty Act, Pub. L. 104-132. See 42 CFR part 72.

'Toxin' has the meaning given that term in 18 U.S.C. 178(2).

'Vector' has the meaning given that term in 18 U.S.C. 178(4).

'Weapon of mass destruction' has the meaning given that term in 18 U.S.C. 2332a(c)(2)(B), (C), and (D).

2. Threat Cases.—Subsection (a)(3) applies in cases that involved a threat to use a weapon, agent, or material covered by this guideline but that did not involve any conduct evidencing an intent or ability to carry out the threat. For example, subsection (a)(3) would apply in a case in which the defendant threatened to contaminate an area with anthrax and also dispersed into the area a substance that appeared to be anthrax but that the defendant knew to be harmless talcum powder. In such a case, the dispersal of talcum powder does not evidence an intent on the defendant's part to carry out the threat. In contrast, subsection (a)(3) would not apply in a case in which the defendant threatened to contaminate an area with anthrax and also dispersed into the area a substance that the defendant believed to be anthrax but that in fact was harmless talcum powder. In such a case, the dispersal of talcum powder was conduct evidencing an intent to carry out the threat because of the defendant's belief that the talcum powder was anthrax.

Subsection (a)(3) shall not apply in any case involving both a threat to use any weapon, agent, or material covered by this guideline and the possession of that weapon, agent, or material. In such a case, possession of the weapon, agent, or material is conduct evidencing an intent to use that weapon, agent, or material.

3. Application of Special Instruction.—Subsection (d) applies in any case in which the defendant is

convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim, or (B) conduct tantamount to the attempted murder of more than one victim, regardless of whether the offense level is determined under this guideline or under another guideline in Chapter Two (Offense Conduct) by use of a cross reference under subsection (c)."

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 1 by inserting after the line referenced to "§ 2E5.1;" the following: "§ 2M6.1;"

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 1 by inserting after the line referenced to "§ 2H1.1" the following: "§ 2M6.1;"

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 842(l)-(o) the following new line:

"18 U.S.C. § 842(p)(2) 2K1.3, 2M6.1;"

By inserting after the line referenced to 18 U.S.C. § 155 the following new line:

"18 U.S.C. § 175 2M6.1;"

By inserting after the line referenced to 18 U.S.C. § 228 the following new line:

"18 U.S.C. § 229 2M6.1;"

In the line referenced to 18 U.S.C. § 2332a by striking "2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A1.5, 2A2.1, 2A2.2, 2B1.3," and by inserting "2M6.1" after "2K1.4"; and

By inserting after the line referenced to 50 U.S.C. App. § 462 the following new line:

"50 U.S.C. App. § 1701 2M5.1, 2M5.2".

Reason for Amendment: This amendment responds to a statutory provision expressing a sense of Congress and addresses two offenses relating to biological and chemical weapons. Specifically, the amendment responds to section 1423(a) of the National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, that expressed a sense of Congress that guideline penalties are inadequate for certain offenses involving the importation and exportation of nuclear, chemical, and biological weapons, materials, or technologies by providing a four-level increase for those offenses in subsection (a)(1) of both §§ 2M5.1 (Evasion of Export Controls) and 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without a Required Validated Export License). This increase serves to make the penalty structure for those offenses proportional to other national security guidelines in

Chapter Two, Part M. In addition, Appendix A (Statutory Index) is amended to refer one of the offenses, 50 U.S.C. 1701 (which prior to this amendment was not referenced in the Statutory Index), to both §§ 2M5.1 and 2M5.2.

The amendment also substantially revises § 2M6.1 to incorporate offenses at 18 U.S.C. § 175, relating to biological weapons, and 18 U.S.C. 229, relating to chemical weapons. Specifically, the amendment modifies § 2M6.1 as follows:

First, the amendment provides three alternative base offense levels. The first alternative base offense level of level 42 applies if the offense was committed with the intent to injure the United States or to aid a foreign government or foreign terrorist organization and incorporates the 12-level enhancement previously at subsection (b)(1). Therefore, this change does not affect the overall offense level for these offenses. "Foreign terrorist organizations" are added because such groups are investing in the acquisition of unconventional weapons such as nuclear, biological, and chemical agents. This first alternative base offense level is expected to apply to cases previously covered by the guideline (i.e., the acquisition of nuclear material from nuclear facilities in order to assist foreign governments, thereby creating a threat to the national security), as well as to cases that implicate the national security and involve biological and chemical weapons and other weapons of mass destruction.

The amendment provides that, if the base offense level of level 42 applies, none of the adjustments in subsection (b) shall apply. However, if death results, the cross reference allows for the possibility of a greater offense level through application of the first degree murder guideline.

The second alternative base offense level of level 28 applies to those cases that do not threaten the national security of the United States, and is expected to apply in most cases.

The third alternative base offense level of level 20 applies to cases which involve a threat to use a nuclear, biological, or chemical weapon or material, or other weapon of mass destruction, but do not involve any conduct evidencing an intent or ability to carry out the threat and, accordingly, are less serious offenses.

Second, the amendment provides a two-level enhancement in subsection (b)(1) if the offense or threat involved particularly dangerous types of nuclear, chemical, and biological weapons and materials that are defined in the

guideline commentary by reference to the applicable statutory and regulatory provisions. This enhancement reflects the distinctions already made in international treaties, provisions of title 18, United States Code, relevant regulatory schemes, and the fact that certain types of weapons and materials are inherently more lethal and pose a greater threat to the public safety.

Third, the amendment provides a four-level enhancement in subsection (b)(2) if any victim died or sustained permanent or life-threatening bodily injury, and a two-level enhancement if any victim sustained serious bodily injury. If the degree of injury is between permanent or life-threatening bodily injury and serious bodily injury, a three-level enhancement is provided. This enhancement is modeled after the enhancement found in § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Bodily Injury).

Fourth, the amendment provides a four-level enhancement for cases involving a substantial disruption of public, governmental, or business functions or services, or the substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense.

Fifth, the amendment provides two cross references, applicable if the resulting offense level is greater and either death resulted (in which case the first or second degree murder guideline would apply), or if the offense was tantamount to attempted murder (in which case the attempted murder guideline would apply). These cross references are also modeled after the cross reference found in § 2N1.1.

Sixth, the amendment provides a special instruction that if the defendant is convicted of one count involving the death of, serious bodily injury to, or attempted murder of, more than one victim, the grouping rules will be applied as if the defendant had been convicted of separate counts for each such victim.

Seventh, the amendment amends Appendix A to refer violations of 18 U.S.C. § 175 and 229 to § 2M6.1 and to delete a number of guideline references for violations of 18 U.S.C. 2332a and instead provide a reference for that offense to §§ 2K1.4 (Arson; Property Damage by Use of Explosives) and 2M6.1 (in the case of other weapons of mass destruction).

Finally, the amendment amends the title of § 2M6.1 to include attempts and conspiracies, and adds § 2M6.1 under the sections addressing attempts and conspiracies in Application Note 1 of § 2X1.1 (Attempt, Solicitation, or

Conspiracy) to indicate that attempts and conspiracies are covered expressly by the § 2M6.1 offense guideline.

22. *Amendment:* Chapter Two, Part S is amended by striking § 2S1.1, and its accompanying commentary, and inserting the following:

“§ 2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(a) Base Offense Level:

(1) The offense level for the underlying offense from which the laundered funds were derived, if (A) the defendant committed the underlying offense (or would be accountable for the underlying offense under subsection (a)(1)(A) of § 1B1.3 (Relevant Conduct)); and (B) the offense level for that offense can be determined; or

(2) 8 plus the number of offense levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the value of the laundered funds, otherwise.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) applies; and (B) the defendant knew or believed that any of the laundered funds were the proceeds of, or were intended to promote (i) an offense involving the manufacture, importation, or distribution of a controlled substance or a listed chemical; (ii) a crime of violence; or (iii) an offense involving firearms, explosives, national security, terrorism, or the sexual exploitation of a minor, increase by 6 levels.

(2) (Apply the Greatest):

(A) If the defendant was convicted under 18 U.S.C. § 1957, increase by 1 level.

(B) If the defendant was convicted under 18 U.S.C. § 1956, increase by 2 levels.

(C) If (i) subsection (a)(2) applies; and (ii) the defendant was in the business of laundering funds, increase by 4 levels.

(3) If (A) subsection (b)(2)(B) applies; and (B) the offense involved sophisticated laundering, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 1956, 1957. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. Definitions.—For purposes of this guideline:

‘Crime of violence’ has the meaning given that term in subsection (a)(1) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

‘Criminally derived funds’ means any funds derived, or represented by a law

enforcement officer, or by another person at the direction or approval of an authorized Federal official, to be derived from conduct constituting a criminal offense.

‘Laundered funds’ means the property, funds, or monetary instrument involved in the transaction, financial transaction, monetary transaction, transportation, transfer, or transmission in violation of 18 U.S.C. 1956 or 1957.

‘Laundering funds’ means making a transaction, financial transaction, monetary transaction, or transmission, or transporting or transferring property, funds, or a monetary instrument in violation of 18 U.S.C. 1956 or 1957.

‘Sexual exploitation of a minor’ means an offense involving (A) promoting prostitution by a minor; (B) sexually exploiting a minor by production of sexually explicit visual or printed material; (C) distribution of material involving the sexual exploitation of a minor, or possession of material involving the sexual exploitation of a minor with intent to distribute; or (D) aggravated sexual abuse, sexual abuse, or abusive sexual contact involving a minor. “Minor” means an individual under the age of 18 years.

2. Application of Subsection (a)(1).—

(A) Multiple Underlying Offenses.—In cases in which subsection (a)(1) applies and there is more than one underlying offense, the offense level for the underlying offense is to be determined under the procedures set forth in Application Note 3 of the Commentary to § 1B1.5 (Interpretation of References to Other Offense Guidelines).

(B) Defendants Accountable for Underlying Offense.—In order for subsection (a)(1) to apply, the defendant must have committed the underlying offense or be accountable for the underlying offense under § 1B1.3(a)(1)(A). The fact that the defendant was involved in laundering criminally derived funds after the commission of the underlying offense, without additional involvement in the underlying offense, does not establish that the defendant committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused the underlying offense.

3. Application of Subsection (a)(2).—

(A) In General.—Subsection (a)(2) applies to any case in which (i) the defendant did not commit the underlying offense; or (ii) the defendant committed the underlying offense (or would be accountable for the underlying offense under § 1B1.3(a)(1)(A)), but the offense level for the underlying offense

is impossible or impracticable to determine.

(B) **Commingle Funds.**—In a case in which a transaction, financial transaction, monetary transaction, transportation, transfer, or transmission results in the commingling of legitimately derived funds with criminally derived funds, the value of the laundered funds, for purposes of subsection (a)(2), is the amount of the criminally derived funds, not the total amount of the commingled funds, if the defendant provides sufficient information to determine the amount of criminally derived funds without unduly complicating or prolonging the sentencing process. If the amount of the criminally derived funds is difficult or impracticable to determine, the value of the laundered funds, for purposes of subsection (a)(2), is the total amount of the commingled funds.

4. Enhancement for Business of Laundering Funds.—

(A) **In General.**—The court shall consider the totality of the circumstances to determine whether a defendant who did not commit the underlying offense was in the business of laundering funds, for purposes of subsection (b)(2)(C).

(B) **Factors to Consider.**—The following is a non-exhaustive list of factors that may indicate the defendant was in the business of laundering funds for purposes of subsection (b)(2)(C):

- (i) The defendant regularly engaged in laundering funds.
- (ii) The defendant engaged in laundering funds during an extended period of time.
- (iii) The defendant engaged in laundering funds from multiple sources.
- (iv) The defendant generated a substantial amount of revenue in return for laundering funds.

(v) At the time the defendant committed the instant offense, the defendant had one or more prior convictions for an offense under 18 U.S.C. 1956 or 1957, or under 31 U.S.C. 5313, 5314, 5316, 5324 or 5326, or any similar offense under state law, or an attempt or conspiracy to commit any such federal or state offense. A conviction taken into account under subsection (b)(2)(C) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

(vi) During the course of an undercover government investigation, the defendant made statements that the defendant engaged in any of the conduct described in subdivisions (i) through (iv).

5. (A) **Sophisticated Laundering under Subsection (b)(3).**—For purposes of subsection (b)(3), ‘sophisticated laundering’ means complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. 1956 offense.

Sophisticated laundering typically involves the use of—

- (i) fictitious entities;
- (ii) shell corporations;
- (iii) two or more levels (i.e., layering) of transactions, transportation, transfers, or transmissions, involving criminally derived funds that were intended to appear legitimate; or
- (iv) offshore financial accounts.

(B) **Non-Applicability of Enhancement.**—If subsection (b)(3) applies, and the conduct that forms the basis for an enhancement under the guideline applicable to the underlying offense is the only conduct that forms the basis for application of subsection (b)(3) of this guideline, do not apply subsection (b)(3) of this guideline.

6. **Grouping of Multiple Counts.**—In a case in which the defendant is convicted of a count of laundering funds and a count for the underlying offense from which the laundered funds were derived, the counts shall be grouped pursuant to subsection (c) of § 3D1.2 (Groups of Closely-Related Counts)."

Chapter Two, Part S is amended by striking section 2S1.2, and its accompanying commentary.

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting "18 U.S.C. § 1960;" before "26 U.S.C. § 7203"; and by inserting "5326" after "5324".

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1957 and the line referenced to 21 U.S.C. 854 by striking "2S1.2" and inserting "2S1.1"; by inserting after the line referenced to 18 U.S.C. 1959 the following new line:

"18 U.S.C. 1960—2S1.3";

And by inserting after the line referenced to 31 U.S.C. 5324 the following new line:

"31 U.S.C. 5326 2S1.3, 2T2.2".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 6 in the first paragraph by striking the second sentence and inserting the following:

"For example, in § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity), subsection (b)(2)(B) applies if the defendant "is convicted under 18 U.S.C. 1956'."

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 6 in the second paragraph by

striking the last sentence and inserting the following:

"For example, § 2S1.1(b)(2)(B) (which is applicable only if the defendant is convicted under 18 U.S.C. 1956) would be applied in determining the offense level under § 2X3.1 (Accessory After the Fact) in a case in which the defendant was convicted of accessory after the fact to a violation of 18 U.S.C. 1956."

Section 3D1.2(d) is amended in the second paragraph by striking "2S1.2,".

Section 8C2.1(a) is amended by striking "2S1.2,".

The Commentary to § 8C2.4 captioned "Application Notes" is amended in Note 5 by striking "2S1.1 (Laundering of Monetary Instruments); and 2S1.2 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity)".

The Commentary to § 8C2.4 captioned "Background" is amended in the seventh sentence by striking "and money laundering".

Reason for Amendment: This amendment consolidates the money laundering guidelines, §§ 2S1.1 (Laundering of Monetary Instruments) and 2S1.2 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), into one guideline that applies to convictions under 18 U.S.C. 1956 or 1957, or 21 U.S.C. 854. The amendment responds in several ways to concerns that the penalty structure existing prior to this amendment for such offenses did not reflect adequately the culpability of the defendant or the seriousness of the money laundering conduct because the offense level for money laundering was determined without sufficient consideration of the defendant's involvement in, or the relative seriousness of, the underlying offense. This amendment is designed to promote proportionality by providing increased penalties for defendants who launder funds derived from more serious underlying criminal conduct, such as drug trafficking, crimes of violence, and fraud offenses that generate relatively high loss amounts, and decreased penalties for defendants who launder funds derived from less serious underlying criminal conduct, such as basic fraud offenses that generate relatively low loss amounts.

First, this amendment ties offense levels for money laundering more closely to the underlying conduct that was the source of the criminally derived funds by separating money laundering offenders into two categories for purposes of determining the base offense level. For direct money launderers (offenders who commit or would be accountable under

§ 1B1.3(a)(1)(A) (Relevant Conduct) for the underlying offense which generated the criminal proceeds), subsection (a)(1) sets the base offense level at the offense level in Chapter Two (Offense Conduct) for the underlying offense (i.e., the base offense level, specific offense characteristics, cross references, and special instructions for the underlying offense). For third party money launderers (offenders who launder the proceeds generated from underlying offenses that the defendant did not commit or would not be accountable for under § 1B1.3(a)(1)(A)), subsection (a)(2) sets the base offense level at level 8, plus an increase based on the value of the laundered funds from the table in subsection (b)(1) of § 2B1.1 (Theft, Fraud, Property Destruction).

Second, in addition to the base offense level calculation, this amendment provides an enhancement designed to reflect the differing seriousness of the underlying conduct that was the source of the criminally derived funds. Subsection (b)(1) provides a six-level enhancement for third party money launderers who knew or believed that any of the laundered funds were the proceeds of, or were intended to promote, certain types of more serious underlying criminal conduct; specifically, drug trafficking, crimes of violence, offenses involving firearms, explosives, national security, terrorism, and the sexual exploitation of a minor. The Commission determined that defendants who knowingly launder the proceeds of these more serious underlying offenses are substantially more culpable than third party launderers of criminally derived proceeds of less serious underlying offenses.

Third, this amendment provides three alternative enhancements, with the greatest applicable enhancement to be applied. These enhancements are designed to (1) ensure that all direct money launderers receive additional punishment for committing both the money laundering offense and the underlying offense, and (2) reflect the differing seriousness of money laundering conduct depending on the nature and sophistication of the offense. Specifically, subsection (b)(2)(A) provides a one-level increase if the defendant was convicted under 18 U.S.C. 1957, and subsection (b)(2)(B) provides a two-level increase if the defendant was convicted under 18 U.S.C. 1956. The one-level difference between these two enhancements reflects the fact that 18 U.S.C. 1956 has a statutory maximum penalty (20 years' imprisonment) that is twice as long as the statutory maximum penalty for

violations of 18 U.S.C. 1957 (10 years' imprisonment). In addition, subsection (b)(3) provides an additional two-level increase if subsection (b)(2)(B) applies and the offense involved sophisticated laundering such as the use of fictitious entities, shell corporations, two or more levels of transactions, or offshore financial accounts. The Commission determined that, similar to fraud and tax offenses that involve sophisticated means, see subsection (b)(8) of § 2B1.1 (Theft, Property Destruction, and Fraud), subsection (b)(2) of § 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents), violations of 18 U.S.C. 1956 that involve sophisticated laundering warrant additional punishment because such offenses are more difficult and time consuming for law enforcement to detect than less sophisticated laundering. As a result of the enhancements provided by subsections (b)(2)(A), (b)(2)(B), and (b)(3), all direct money launderers will receive an offense level that is one to four levels greater than the Chapter Two offense level for the underlying offense, depending on the statute of conviction and sophistication of the money laundering offense conduct.

With respect to third party money launderers, subsection (b)(2)(C) provides a four-level enhancement if the defendant is "in the business" of laundering funds. The Commission determined that, similar to a professional "fence", see § 2B1.1(b)(4)(B), defendants who routinely engage in laundering funds on behalf of others, and who gain financially from engaging in such transactions, warrant substantial additional punishment because they encourage the commission of additional criminal conduct.

Fourth, this amendment contains an application note expressly providing instructions regarding the grouping of money laundering counts with a count of conviction for the underlying offense. In a case in which the defendant is to be sentenced on a count of conviction for money laundering and a count of conviction for the underlying offense that generated the laundered funds, this application note instructs that such counts shall be grouped pursuant to subsection (c) of § 3D1.2 (Groups of Closely-Related Counts), thereby resolving a circuit conflict on this issue. Compare *United States v. Cusumano*, 943 F.2d 305 (3d Cir. 1991), *cert. denied*, 502 U.S. 1036 (1992) (affirming decision to group under § 3D1.2(b) money laundering count with other

offenses that "were all part of one scheme to obtain money" from an employee benefit fund); *United States v. Leonard*, 61 F.3d 1181 (5th Cir. 1995) (affirming decision to group fraud and money laundering offenses under § 3D1.2(d) because defendant's money laundering activity and fraudulent telemarketing scheme constituted the same common plan and had the same victims); and *United States v. Wilson*, 98 F.3d 281 (7th Cir. 1996) (district court erred in not grouping money laundering and mail fraud convictions under § 3D1.2(d)), with *United States v. Kneeland*, 148 F.3d 6 (1st Cir. 1998) (affirming district court decision not to group fraud and money laundering counts under § 3D1.2(d) because the offense level for fraud, unlike money laundering, is determined "largely on the basis of total amount of harm or loss"); *United States v. Napoli*, 179 F.3d 1 (2d Cir. 1999), *cert. denied*, 528 U.S. 1162 (2000) (affirming decision not to group wire fraud and money laundering counts under § 3D1.2(b) or (d) because the offenses have different victims and the offense level for money laundering, unlike fraud, is not based primarily on the amount of money involved); *United States v. Hildebrand*, 152 F.3d 756 (8th Cir.), *cert. denied*, 525 U.S. 1033 (1998) (finding that money laundering and fraud counts should not be grouped because the fraud and money laundering guidelines do not measure the same types of harm); *United States v. Hanley*, 190 F.3d 1017 (9th Cir. 1999) (affirming decision not to group money laundering and wire fraud counts under § 3D1.2(d) because the guidelines for such offenses measure harm differently); and *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (district court erred in grouping money laundering and fraud counts under § 3D1.2(d) because the measurement of harm for fraud is not the same as that for money laundering).

Finally, this amendment provides that convictions under 18 U.S.C. 1960 are referenced to § 2S1.3 (Structuring Transactions to Evade Reporting Requirements). Operation of money transmitting businesses without an appropriate license is proscribed by 18 U.S.C. 1960, as are failures to comply with certain reporting requirements issued under 31 U.S.C. 5330. The Commission determined that offenses involving these regulatory requirements serve many of the same purposes as Currency Transaction Reports, Currency and Monetary Instrument Reports, Reports of Foreign Bank and Financial Accounts, and Reports of Cash Payments over \$10,000 Received in a

Trade or Business, violations regarding which currently are referenced to § 2S1.3, and that, therefore, violations of 18 U.S.C. § 1960 also should be referenced to § 2S1.3.

23. *Amendment:* The Commentary to § 3B1.2 is amended by striking Notes 1 through 4 and the background and inserting the following:

“1. Definition.—For purposes of this guideline, ‘participant’ has the meaning given that term in Application Note 1 of § 3B1.1 (Aggravating Role).

2. Requirement of Multiple

Participants.—This guideline is not applicable unless more than one participant was involved in the offense. See the Introductory Commentary to this Part (Role in the Offense).

Accordingly, an adjustment under this guideline may not apply to a defendant who is the only defendant convicted of an offense unless that offense involved other participants in addition to the defendant and the defendant otherwise qualifies for such an adjustment.

3. Applicability of Adjustment.—

(A) Substantially Less Culpable than Average Participant.—This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant.

A defendant who is accountable under § 1B1.3 (Relevant Conduct) only for the conduct in which the defendant personally was involved and who performs a limited function in concerted criminal activity is not precluded from consideration for an adjustment under this guideline. For example, a defendant who is convicted of a drug trafficking offense, whose role in that offense was limited to transporting or storing drugs and who is accountable under § 1B1.3 only for the quantity of drugs the defendant personally transported or stored is not precluded from consideration for an adjustment under this guideline.

(B) Conviction of Significantly Less Serious Offense.—If a defendant has received a lower offense level by virtue of being convicted of an offense significantly less serious than warranted by his actual criminal conduct, a reduction for a mitigating role under this section ordinarily is not warranted because such defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a Chapter Two offense level of level 14 under § 2D1.1 (Unlawful Manufacturing, Importing,

Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy)) is convicted of simple possession of cocaine (an offense having a Chapter Two offense level of level 6 under § 2D2.1 (Unlawful Possession; Attempt or Conspiracy)), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine.

(C) Fact-Based Determination.—The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, involves a determination that is heavily dependent upon the facts of the particular case. As with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant’s bare assertion, that such a role adjustment is warranted.

4. Minimal Participant.—Subsection (a) applies to a defendant described in Application Note 3(A) who plays a minimal role in concerted activity. It is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant’s lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant. It is intended that the downward adjustment for a minimal participant will be used infrequently.

5. Minor Participant.—Subsection (b) applies to a defendant described in Application Note 3(A) who is less culpable than most other participants, but whose role could not be described as minimal.”.

Reason for Amendment: This amendment resolves a circuit conflict regarding whether a defendant who is accountable under § 1B1.3 (Relevant Conduct) only for conduct in which the defendant personally was involved, and who performs a limited function in concerted criminal activity, is precluded from consideration for an adjustment under § 3B1.2 (Mitigating Role). Compare *United States v. Burnett*, 66 F.3d 137 (7th Cir. 1995) (“where a defendant is sentenced only for the amount of drugs he handled, he is not entitled to a § 3B1.2 reduction”), with *United States v. Rodriguez De Varon*, 175 F.3d 930 (11th Cir. 1999) (a defendant is not automatically precluded from consideration for a mitigating role adjustment in a case in which the defendant is held accountable solely for the amount of drugs he

personally handled). Although this circuit conflict arose in the context of a drug offense, the amendment resolves it in a manner that makes the rule applicable to all types of offenses.

The amendment adopts the approach articulated by the Eleventh Circuit in *United States v. Rodriguez De Varon*, *supra*, that § 3B1.2 does not automatically preclude a defendant from being considered for a mitigating role adjustment in a case in which the defendant is held accountable under § 1B1.3 solely for the amount of drugs the defendant personally handled. In considering a § 3B1.2 adjustment, a court must measure the defendant’s role against the relevant conduct for which the defendant is held accountable at sentencing, whether or not other defendants are charged.

In contrast to the holding in *United States v. Burnett*, *supra*, this amendment allows the court to apply traditional analysis on the applicability of a reduction pursuant to § 3B1.2, even in a case in which a defendant is held liable under § 1B1.3 only for conduct (such as drug quantities) in which the defendant was involved personally.

The substantive impact of this amendment in resolving the circuit conflict is to provide, in the context of a drug courier, for example, that the court is not precluded from considering a § 3B1.2 adjustment simply because the defendant’s role in the offense was limited to transporting or storing drugs, and the defendant was accountable under § 1B1.3 only for the quantity of drugs the defendant personally transported or stored. The amendment does not require that such a defendant receive a reduction under § 3B1.2, or suggest that such a defendant can receive a reduction based only on those facts; rather, the amendment provides only that such a defendant is not precluded from consideration for such a reduction if the defendant otherwise qualifies for the reduction pursuant to the terms of § 3B1.2.

In addition to resolving the circuit conflict, the amendment makes the following non-substantive revisions to § 3B1.2 to clarify guideline application: (1) Incorporating commentary from the Introduction to Chapter Three, Part B (Role in the Offense) that there must be more than one participant before application of a mitigating role adjustment may be considered; (2) incorporating into this guideline the definition of “participant” from § 3B1.1 (Aggravating Role); (3) moving into an application note significant background commentary that has been cited frequently in appellate decisions; (4) adding a section on fact-based

determinations to Application Note 3 that emphasizes the significant judicial role in decision-making on the applicability of § 3B1.2; (5) maintaining commentary language that the minimal role adjustment is intended to be used infrequently; and (6) making technical amendments to the Commentary to clarify applicable rules (such as the addition of headings for, and the reordering of, application notes in the commentary) that are intended to have no substantive impact.

The language regarding “average participant” is moved from the Background into Application Note 3(A) to provide guidance as to the applicability of § 3B1.2. For a reduction to apply, the court, at a minimum, must

make a factual determination that the defendant’s role was significantly less culpable than the average participant.

24. *Amendment:* The Commentary to § 2J1.6 captioned “Application Notes” is amended in Note 3 in the first sentence of the second paragraph by striking “In” and inserting “However, in”; and by inserting “other than a case of failure to appear for service of sentence,” after “offense and the failure to appear,”.

The Commentary to § 2M3.9 captioned “Application Notes” is amended by inserting after Note 2 the following:

“3. A term of imprisonment imposed for a conviction under 50 U.S.C. § 421 shall be imposed consecutively to any other term of imprisonment.”.

Reason for Amendment: This amendment makes two minor technical changes. First, the amendment makes an editorial change in the commentary to § 2J1.6 (Failure to Appear by Defendant) to improve the transition between the first and second paragraphs of Application Note 3. Second, the amendment adds an application note to § 2M3.9 (Disclosure of Information Identifying a Covert Agent) that implements the consecutive sentencing requirement of 50 U.S.C. 421, relating to the disclosure of information identifying a covert agent.

[FR Doc. 01-13966 Filed 6-5-01; 8:45 am]

BILLING CODE 2210-40-P; 2211-01-P



Federal Register

**Wednesday,
June 6, 2001**

Part III

Department of Housing and Urban Development

24 CFR Part 982

**Exception Payment Standard to Offset
Increase in Utility Costs in the Housing
Choice Voucher Program; Interim Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****24 CFR Part 982**

[Docket No. FR 4672-I-01]

RIN 2577-AC29

**Exception Payment Standard to Offset
Increase in Utility Costs in the Housing
Choice Voucher Program**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: Currently, increased energy costs in some parts of the country have had an adverse impact on the ability of applicants and participants in the Housing Choice Voucher program to either lease a unit while paying no more than 40 percent of their income for rent, or, once having leased a unit, to continue to pay both rent and the higher utility costs. Therefore, HUD is temporarily approving higher exception payment standard amounts for certain PHAs that have adopted a new utility allowance schedule after October 1, 2000 of between 110% and 120% of the Fair Market Rents (FMRs) without requiring the Public Housing Agency (PHA) to seek HUD approval, in order to mitigate the adverse impact of increased energy costs. HUD will calculate these exception payment standards using new rental data (reflected in proposed FMRs for FY 2002 published at 66 FR 23770 (May 9, 2001)) with the result that in areas where energy costs have increased substantially the exception payment standard amount will be between 110% and 120% of current FMRs. These exception payment standards are published in the **Federal Register** as appendix A immediately following this rule. HUD is also permitting these exception payment standard amounts to be used at interim reexaminations of families until September 30, 2001.

The provisions of this interim rule apply only for the balance of the federal fiscal year ending September 30, 2001. The proposed fair market rents for FY 2002 published at 66 FR 23770 (May 9, 2001) reflect the increased cost of utilities.

DATES: Comment Due Date: August 6, 2001.

Effective Date: This Interim Rule is effective July 6, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban

Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title.

Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT:

Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708-0477 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**Background**

Section 8 of the United Housing Act of 1937 (the Act)(42 U.S.C.1437f) authorizes housing assistance to assist lower income families in obtaining decent, safe, and sanitary housing. The amount of the housing assistance payment in the housing choice voucher program is limited by the payment standard amounts adopted by the PHA based on the HUD published FMR for designated areas of the country. The FMR for an area is the amount that would be needed to pay gross rent (shelter plus all utilities except telephone) for privately owned rental housing.

The payment standard amount is the maximum subsidy amount available to pay for rent and family-furnished utilities. Families searching for housing may fail to find units that meet the housing quality standards for the program because the cost of rent plus family-furnished utilities for many of these units, particularly in a tight rental market, exceeds the current payment standard amounts that do not reflect the higher cost of energy since publication of the FY 2001 FMRs (see 65 FR 57658, September 25, 2000). Also, an increasing number of families are having difficulty finding standard quality units without paying more than 40 percent of their adjusted income for rent at initial occupancy, which is precluded by law. Also, current participants are affected because they have to pay more out-of-pocket for rent and family-furnished utilities. As a result, some families have rent burdens that exceed 50 percent of their income.

I. Use of Payment Standard Amounts

HUD has determined that it is appropriate to take special steps to

permit PHAs to increase payment standard amounts to reflect the recent significant increases in utility expenses for natural gas and petroleum. The rule allows PHAs to establish exception payment standard amounts calculated using updated data on the costs of rents and utilities (which are reflected in proposed FMRs for FY 2002 published at 66 FR 23770 (May 9, 2001).) This increase in the exception payment standard amounts is necessary to prevent any hardship on families who are currently searching for housing but who, because of increased utility costs, are unable to find units for which the gross rent (including the cost of all utilities) falls within current established PHA payment standard amounts that are limited to 110 percent of the published fair market rent.

Appendix A, published in the **Federal Register** immediately following this rule, lists the HUD approved maximum exception payment standard amounts for each unit size in each fair market rent area. These are the maximum HUD approved exception payment standard amounts, and are capped at 120 percent of the 40th percentile rent under 24 CFR 888.113. Some housing authorities have set their payment standards based on 50th percentile rents under 65 FR 58870 (October 2, 2000) in order to deconcentrate areas of poverty and promote residential choice. Those PHAs may use either the appendix A amounts or 110% of their FMRs as the exception payment standard amounts. The use of the exception payment standard amounts on appendix A is only approved for those PHAs that have adopted a new utility allowance schedule after October 1, 2000.

Permission for PHAs to establish new maximum payment standard amounts without HUD approval will continue in effect only until HUD publishes new fair market rents for effect on or about October 1, 2001. If HUD has approved the PHA adoption of exception payment standard amounts that are higher than the maximum exception payment standard amounts published by HUD in appendix A of this interim rule, HUD approval to use those higher maximum payment standard amounts will continue in effect. The PHA's establishment of the revised payment standard amounts may not result in rents higher than 120% of current FMRs without HUD approval under the procedures in 24 CFR 982.503(c)(3).

This interim rule gives a PHA the flexibility to adjust the payment standard amounts on its payment standard schedule up to the maximum HUD-approved exception payment standard amounts in appendix A to

increase the amount of a participant's subsidy to cover the increased cost of utilities. A PHA should review its utility allowance schedule to determine if there has been a recent increase in utility costs of 10 percent or more in the cost of utilities and that increase is reflected in the utility allowance schedule adopted by the PHA after September 30, 2000. For a PHA to establish these exception payment standards it is not sufficient that the cost of any one utility increased by more than 10 percent. Instead, the PHA must determine that the total cost of all utilities for a typical two-bedroom unit has increased by more than 10 percent based on the difference between the new utility allowance schedule and the previous schedule.

PHAs should review their current payment standard amounts to determine if they are adequate to meet the increased cost of utilities in the community based on average consumption rates. If the payment standard amounts are not adequate to meet the increased utility costs, the PHA should increase the payment standard by an appropriate amount up to the maximum exception payment standard amount permitted by this interim rule and appendix A.

II. Methodology and Source of Data

HUD's standard methodology for incorporating changes in utility costs into FMRs relies on the most current CPI data on annual changes in residential utility costs. Annual rather than point-to-point monthly comparisons (e.g., July 1999 to July 2000) are used because monthly utility price indices are volatile and often not reflective of the annualized cost of utilities.

In developing the proposed FMRs for FY 2002, HUD has determined that the methodology using CPI data does not adequately capture the unusual increases in natural gas prices that occurred at the end of calendar year 2000. This methodology captures a 17 percent increase in natural gas prices from 1999 to 2000, but December 1999 to December 2000 prices increased by an average of 37 percent and Department of Energy projections for 2002 are very similar to the December 2000 prices. For purposes of estimating FY 2002 FMRs, the Department has therefore modified the natural gas inflation component to use December-to-December costs when available, and to use second half to second half of the year figures for CPI areas where December 2000 data were not available. This is a one-time change made to respond to unusual circumstances; HUD

expects to return to the CPI-based methodology next year.

III. Rule Change

In addition to publishing the maximum exception payment standard amounts in appendix A, this rule revises the existing program regulations at 24 CFR 982.503(b)(2) and (c)(2), and 982.505(c)(4) to allow the PHA to adopt these exception payment standard amounts when calculating a family's housing assistance at the next annual reexamination or any interim reexamination conducted as a result of a family request for relief based on a significant increase in utility costs. This modification to allow use of these exception payment standard amounts at interim reexamination applies only through September 30, 2001, when it expires.

IV. Findings and Certifications

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule. One of these exceptions is where public comment is "impracticable, unnecessary, or contrary to the public interest." In this case, delaying the effective date for public comment would be contrary to the public interest. The nation is experiencing a significant increase in the cost of utilities, especially natural gas and petroleum. Due to the increased utility costs in some areas, families in the housing choice voucher program are having current difficulty finding affordable housing or, if already housed, they are having difficulty paying for utilities. At this time, HUD has available current FMR data which, while not yet in effect, if used as a basis to calculate exception payments, would allow HUD to approve exception payment standards above current FMRs within its existing regulatory authority. This step should be taken as quickly as possible to alleviate hardship in areas where there has been an unexpected sharp increase in utility costs. The comments received within the 60-day comment period will be considered during development of final FMRs for publication on October 1, 2001.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant

economic impact on a substantial number of small entities. This rule permits Housing Authorities to use an exception payment standard based on new data, essentially allowing them to approve payment standards of up to 120% of FMR without HUD approval for the purpose of accommodating increased utility costs in certain areas.

Environmental Impact

This rule and appendix A involve establishment of rate or cost determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule and appendix A are categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this interim rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this interim rule is a "significant regulatory action," as defined in section 3(f) of the Order, (but not economically significant, as provided in section 3(f)(1) of the Order). Calculations by HUD show that the impact of the new exception payment standards will be slight, an increase of four dollars per month for the average voucher holder. Increases in energy costs generally translate to low percentage increases in rent costs; for example, a 50% increase in natural gas prices would increase FMRs by only 1%. This is because natural gas comprises only 27% of utility costs and utility costs average only 8–15% of total rent costs in metropolitan areas. With approximately 1.5 million voucher holders, the cost through September of 2001 (when new

FMRs will go into effect) will be significantly less than the threshold provided in section 3(f)(1) of the Order. For these reasons, HUD concludes that the rule is not economically significant within the meaning of the Order.

Any changes made to this interim rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Amend 24 CFR 982.503 as follows:

a. Revise the first sentence of paragraph (b)(2);

b. Add a second sentence to paragraph (c)(2)(i); and

c. Add a new paragraph (c)(2)(iii).

The additions and revisions read as follows:

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

* * * * *

(b) * * *

(2) Except as provided in paragraph (c)(2)(iii) of this section, the PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. * * *

(c) * * *

(2)(i) * * * The PHA may establish an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR, in accordance with paragraph (c)(2)(iii) of this section, without requesting approval from HUD. * * *

(iii) Until September 30, the PHA may establish an exception payment standard amount for all or part of an FMR area in accordance with maximum payment standard amounts published in the **Federal Register** between September 25, 2000 and September 30, 2001 without requesting HUD approval, under the following conditions:

(A) The payment standard amounts referenced in paragraph (c)(2)(iii) are the maximum payment standard amounts until October 1, 2001 unless HUD has approved the PHA's establishment of a higher payment standard amount;

(B) The PHA's establishment of the maximum payment standard amounts in paragraph (c)(2)(iii)(A) of this section does not result in a payment standard amount that is greater than 120% of the published FMR;

(C) The PHA has adopted a new utility allowance schedule after October 1, 2000 which reflects that the total cost

of all utilities for a typical two-bedroom unit has increased by more than ten percent based on the difference between the new utility allowance schedule and the previous schedule; and

(D) The current payment standard amounts are not adequate to meet increased utility costs at 100% of the FMR.

* * * * *

3. Amend 24 CFR 982.505 by revising paragraph (c)(4) to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * *

(4) *Increase in the payment standard amount during the HAP contract term.*

If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount, except that, until September 30, 2001, if the PHA increases the payment standard amount pursuant to 24 CFR 982.503(b)(2) and (c)(2), the new payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the family's first regular or first interim reexamination on or after the effective date of the increase in the payment standard amount.

* * * * *

Dated: May 14, 2001.

Mel Martinez,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4210-33-P

**SPECIAL FY 2001
EXCEPTION PAYMENT STANDARDS
(April 2001)**

1.10% REVISED FY 2001 PAYMENT STANDARD

A L A B A M A

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS							Counties of FMR AREA within STATE						
0	BR 1	BR 2	BR 3	BR 4	BR								
Anniston, AL MSA.....	293	347	434	606	686	Calhoun							
Auburn-Opelika, AL MSA.....	292	409	525	682	862	Lee							
Birmingham, AL MSA.....	448	505	588	799	885	Blount, Jefferson, St. Clair, Shelby							
Columbus, GA-AL MSA.....	396	440	529	691	750	Russell							
Decatur, AL MSA.....	390	394	496	643	769	Lawrence, Morgan							
Dothan, AL MSA.....	353	360	449	617	626	Dale, Houston							
Florence, AL MSA.....	331	380	488	610	683	Colbert, Lauderdale							
Gadsden, AL MSA.....	293	358	414	538	662	Etowah							
Huntsville, AL MSA.....	409	478	590	786	937	Limestone, Madison							
Mobile, AL MSA.....	429	478	549	740	868	Baldwin, Mobile							
Montgomery, AL MSA.....	448	477	565	770	927	Autauga, Elmore, Montgomery							
Tuscaloosa, AL MSA.....	386	413	549	756	799	Tuscaloosa							

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES						NONMETROPOLITAN COUNTIES					
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4	BR
Barbour.....	274	327	388	504	579	Bibb.....	274	327	388	525	630
Bullock.....	274	327	388	504	579	Butler.....	274	327	388	504	579
Chambers.....	274	327	388	504	580	Cherokee.....	274	327	388	504	579
Chilton.....	284	327	388	504	579	Choctaw.....	274	327	388	504	579
Clarke.....	274	327	388	504	579	Clay.....	274	327	388	504	579
Cleburne.....	274	327	388	504	579	Coffee.....	274	385	501	697	783
Conecuh.....	274	327	388	504	579	Coosa.....	274	327	388	504	579
Covington.....	274	327	388	504	579	Crenshaw.....	274	327	388	504	579
Cullman.....	274	327	388	517	629	Dallas.....	274	327	388	504	579
Dekalb.....	274	327	388	504	579	Escambia.....	274	327	388	504	579
Fayette.....	274	327	388	504	579	Franklin.....	274	327	388	504	579
Geneva.....	274	327	388	504	579	Greene.....	274	327	388	504	579
Hale.....	274	327	388	504	579	Henry.....	274	327	388	504	579
Jackson.....	296	327	388	504	619	Lamar.....	274	327	388	504	579
Lowndes.....	274	327	388	504	579	Macon.....	300	336	449	562	630
Marengo.....	274	327	388	504	579	Marion.....	274	327	388	504	579
Marshall.....	315	327	397	550	651	Monroe.....	274	327	388	504	579
Perry.....	274	327	388	504	579	Pickens.....	274	327	388	504	579
Pike.....	329	382	457	592	690	Randolph.....	274	327	388	504	579
Sumter.....	274	327	388	504	579	Talladega.....	274	327	388	504	579
Tallapoosa.....	275	327	388	504	579	Walker.....	274	339	399	516	656
Washington.....	274	327	388	504	579	Wilcox.....	274	327	388	504	579
Winston.....	274	327	388	504	579						

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

A L A S K A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Anchorage, AK MSA..... 562 664 879 1224 1445 Anchorage

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Aleutian East..... 582 656 742 925 1211
Bethel..... 753 941 1192 1494 1671
Dillingham..... 727 740 983 1230 1378
Haines..... 542 671 764 1040 1071
Kenai Peninsula..... 492 628 757 1052 1242Aleutian West..... 499 565 632 794 889
Bristol Bay..... 604 697 783 1090 1185
Fairbanks North Star..... 458 624 819 1126 1328
Juneau..... 810 936 1191 1586 1648
Ketchikan Gateway..... 594 728 975 1357 1428Kodiak Island..... 774 851 1107 1383 1794
Matanuska-Susitna..... 521 705 793 1076 1273
North Slope..... 871 891 1103 1532 1785
Pr. Wales-Outer Ketchikan 406 646 744 1031 1091
Skagway-Yakutat-Angoon.. 497 505 655 821 922
Valdez-Cordova..... 608 746 828 1057 1260
Wrangell-Petersburg..... 443 653 794 1011 1111Lake & Peninsula..... 464 754 847 1057 1187
Nome..... 766 948 1065 1482 1672
Northwest Arctic..... 922 1036 1163 1619 1911
Sitka..... 640 761 853 1189 1404
Southeast Fairbanks..... 510 536 646 809 907
Wade Hampton..... 435 655 740 924 1034
Yukon-Koyukuk..... 580 654 738 923 1068

A R I Z O N A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Flagstaff, AZ..... 490 530 689 924 1110 Coconino
*Las Vegas, NV-AZ MSA..... 600 712 848 1181 1395 Mohave
*Phoenix-Mesa, AZ MSA..... 541 655 823 1145 1348 Maricopa, Pinal
Tucson, AZ MSA..... 439 526 701 974 1148 Pima
Yuma, AZ MSA..... 423 490 653 907 914 YumaCoconino..... 407 429 545 710 845
Mohave..... 407 429 545 710 845
Maricopa, Pinal..... 407 429 545 710 845
Pima..... 407 429 545 710 845
Yuma..... 407 429 545 710 845

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Apache..... 407 429 545 710 845
Gila..... 407 429 545 710 845
Greenlee..... 407 429 545 710 845
Navajo..... 407 429 545 710 845
Yavapai..... 433 450 603 840 925Cochise..... 407 429 545 710 845
Graham..... 407 429 545 710 845
La Paz..... 407 429 545 710 845
Santa Cruz..... 407 450 560 710 845

A R K A N S A S

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Fayetteville-Springdale-Rogers, AR MSA..... 347 436 575 776 803 Benton, Washington
Fort Smith, AR-OK MSA..... 378 382 502 672 706 Crawford, Sebastian
Jonesboro, AR MSA..... 409 445 523 721 761 Craighead
Little Rock-North Little Rock, AR MSA..... 427 475 564 781 912 Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA..... 440 514 604 839 881 CrittendenBenton, Washington..... 407 429 545 710 845
Crawford, Sebastian..... 407 429 545 710 845
Craighead..... 407 429 545 710 845
Faulkner, Lonoke, Pulaski, Saline..... 407 450 560 710 845
Crittenden..... 407 450 560 710 845

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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A R K A N S A S continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Pine Bluff, AR MSA..... 327 388 511 644 836 Jefferson
 Texarkana, TX-Texarkana, AR MSA..... 348 425 520 685 727 Miller

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Arkansas.....	295	320	411	561	608	Ashley.....	269	320	411	545	643
Baxter.....	269	343	456	587	715	Boone.....	319	325	431	601	709
Bradley.....	269	320	411	545	608	Calhoun.....	269	320	411	545	608
Carroll.....	317	346	411	545	651	Chicot.....	269	320	411	545	608
Clark.....	295	320	417	545	657	Clay.....	269	320	411	545	608
Cleburne.....	306	320	411	545	616	Cleveland.....	269	320	411	545	608
Columbia.....	269	320	411	545	608	Conway.....	269	333	446	556	625
Cross.....	280	354	411	552	652	Dallas.....	269	320	411	545	608
Deshia.....	269	320	411	545	608	Drew.....	269	348	466	644	656
Franklin.....	282	320	411	545	608	Fulton.....	279	320	411	545	608
Garland.....	269	343	459	641	758	Grant.....	280	333	411	545	614
Greene.....	289	320	411	545	608	Hempstead.....	269	320	411	545	608
Hot Spring.....	269	320	411	545	608	Howard.....	269	320	411	545	608
Independence.....	283	328	411	545	608	Izard.....	269	320	411	545	608
Jackson.....	279	320	411	545	608	Johnson.....	269	320	411	545	608
Lafayette.....	282	320	411	545	608	Lawrence.....	269	320	411	545	608
Lee.....	296	320	411	545	608	Lincoln.....	291	320	418	558	608
Little River.....	269	320	418	579	683	Logan.....	282	320	411	545	608
Madison.....	308	320	418	545	608	Marion.....	269	320	411	545	608
Mississippi.....	307	333	446	588	659	Monroe.....	274	320	411	545	608
Montgomery.....	269	320	411	545	608	Nevada.....	269	320	411	562	608
Newton.....	269	320	411	545	608	Ouachita.....	315	320	411	566	668
Perry.....	269	320	411	545	608	Phillips.....	269	320	411	545	608
Pike.....	269	320	411	545	608	Poinsett.....	269	320	411	545	608
Polk.....	269	320	411	545	608	Pope.....	269	352	446	618	714
Prairie.....	269	320	411	545	608	Randolph.....	269	320	411	545	608
St. Francis.....	269	327	411	555	654	Scott.....	269	320	411	545	608
Searcy.....	269	320	411	545	608	Sevier.....	294	320	411	545	608
Sharp.....	269	320	411	545	608	Stone.....	269	320	411	545	608
Union.....	338	356	429	576	705	Van Buren.....	269	320	411	545	671
White.....	269	320	411	562	608	Woodruff.....	269	320	411	545	608
Yell.....	280	320	411	545	608						

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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C A L I F O R N I A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Bakersfield, CA MSA.....	418	469	589	819	906	Kern
Chico-Paradise, CA MSA.....	382	491	654	897	1072	Butte
Fresno, CA MSA.....	433	485	579	807	930	Fresno, Madera
Los Angeles-Long Beach, CA PMSA.....	588	704	891	1202	1435	Los Angeles
Merced, CA MSA.....	456	514	624	863	1018	Merced
Modesto, CA MSA.....	505	543	663	924	1090	Stanislaus
*Oakland, CA PMSA.....	887	1073	1346	1846	2204	Alameda, Contra Costa
*Orange County, CA PMSA.....	879	961	1188	1654	1840	Orange
Redding, CA MSA.....	433	481	603	837	985	Shasta
Riverside-San Bernardino, CA PMSA.....	522	581	710	985	1165	Riverside, San Bernardino
*Sacramento, CA PMSA.....	545	613	768	1065	1255	El Dorado, Placer, Sacramento
Salinas, CA MSA.....	614	718	866	1203	1263	Monterey
*San Diego, CA MSA.....	767	876	1096	1525	1798	San Diego
San Francisco, CA PMSA.....	1156	1497	1892	2596	2747	Marin, San Francisco, San Mateo
*San Jose, CA PMSA.....	60	1396	1724	2364	2655	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA MSA..	632	714	905	1259	1486	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA.....	715	793	1005	1400	1581	Santa Barbara
Santa Cruz-Watsonville, CA PMSA.....	800	953	1273	1770	2073	Santa Cruz
Santa Rosa, CA PMSA.....	751	852	1105	1536	1812	Sonoma
Stockton-Lodi, CA MSA.....	514	581	747	1040	1226	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA.....	762	866	1056	1467	1731	Napa, Solano
*Ventura, CA PMSA.....	764	879	1112	1480	1724	Ventura
Visalia-Tulare-Porterville, CA MSA.....	423	450	587	819	935	Tulare
Yolo, CA PMSA.....	546	623	771	1068	1262	Yolo
Yuba City, CA MSA.....	377	440	565	788	912	Sutter, Yuba

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Alpine.....	345	518	587	815	878	Amador.....	477	525	702	978	1090
Calaveras.....	417	484	644	898	1057	Colusa.....	378	423	545	759	878
Del Norte.....	354	485	644	899	1059	Glenn.....	345	423	545	759	878
Humboldt.....	357	495	647	904	1069	Imperial.....	391	488	601	838	878
Inyo.....	358	484	620	814	878	Kings.....	400	466	582	810	953
Lake.....	390	496	662	834	1085	Lassen.....	423	429	556	759	878
Mariposa.....	373	475	611	800	943	Mendocino.....	478	577	707	985	992
Modoc.....	378	423	545	759	878	Mono.....	527	632	841	1171	1384
Nevada.....	433	592	789	1097	1270	Piomas.....	381	423	545	759	878
San Benito.....	595	701	877	1223	1430	Sierra.....	345	464	572	794	937
Siskiyou.....	362	423	545	759	878	Tehama.....	361	423	545	759	878
Trinity.....	388	423	545	759	878	Tuolumne.....	382	522	696	970	1143

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

C O L O R A D O

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS							Counties of FMR AREA within STATE
0	BR 1	BR 2	BR 3	BR 4	BR		
	641	767	984	1371	1616	Boulder	
Boulder-Longmont, CO PMSA.....							
Colorado Springs, CO MSA.....	505	543	723	1008	1191	El Paso	
*Denver, CO PMSA.....	607	727	967	1341	1584	Adams, Arapahoe, Denver, Douglas, Jefferson	
Fort Collins-Loveland, CO MSA.....	500	617	761	1059	1250	Larimer	
Grand Junction, CO MSA.....	459	477	597	805	958	Mesa	
Greeley, CO PMSA.....	537	593	747	1036	1226	Weld	
Pueblo, CO MSA.....	484	502	627	845	1007	Pueblo	

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

	0	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	0	BR 1	BR 2	BR 3	BR 4	BR
Alamosa.....	434	451	563	760	906		Archuleta.....	520	568	672	909	1080	
Baca.....	434	451	563	760	906		Bent.....	434	451	563	760	906	
Chaffee.....	434	451	563	760	906		Cheyenne.....	434	451	563	760	906	
Clear Creek.....	434	507	573	798	941		Conejos.....	434	451	563	760	906	
Costilla.....	434	451	563	760	906		Crowley.....	434	451	563	760	906	
Custer.....	434	451	563	760	906		Delta.....	434	451	563	760	906	
Dolores.....	434	451	563	760	906		Eagle.....	585	637	850	1183	1394	
Elbert.....	481	531	608	760	937		Fremont.....	434	451	563	760	906	
Garfield.....	504	540	683	854	1119		Gilpin.....	434	578	734	969	1072	
Grand.....	516	521	659	825	1000		Gunnison.....	434	451	563	760	906	
Hinsdale.....	434	460	563	760	906		Huerfano.....	434	451	563	760	906	
Jackson.....	434	451	563	760	906		Kiowa.....	434	451	563	760	906	
Kit Carson.....	434	451	563	760	906		Lake.....	434	451	563	760	906	
La Plata.....	567	628	827	1153	1360		Las Animas.....	434	464	563	760	906	
Lincoln.....	434	451	563	760	906		Logan.....	434	451	563	760	906	
Mineral.....	434	451	563	760	906		Moffat.....	434	451	563	760	906	
Montezuma.....	434	451	563	760	906		Montrose.....	434	451	569	790	931	
Morgan.....	434	451	563	760	906		Otero.....	434	451	563	760	906	
Ouray.....	434	451	569	760	923		Park.....	434	482	627	870	990	
Phillips.....	434	451	563	760	906		Pitkin.....	652	892	1189	1568	1783	
Prowers.....	434	451	563	760	906		Rio Blanco.....	434	451	563	760	906	
Rio Grande.....	434	451	563	760	906		Routt.....	434	525	694	965	1138	
Saguache.....	434	451	563	760	906		San Juan.....	434	451	563	760	906	
San Miguel.....	799	1156	1270	1586	2047		Sedgwick.....	434	451	563	760	906	
Summit.....	560	670	860	1196	1472		Teller.....	434	515	686	954	963	
Washington.....	434	451	563	760	906		Yuma.....	434	451	563	760	906	

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

C O N N E C T I C U T

METROPOLITAN FMR AREAS

	0	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA.....	540	703	847	1059	1320		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 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 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 Hartington 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.....	623	764	945	1211	1404		Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford town, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town 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
New London-Norwich, CT-PI MSA.....	561	679	827	1034	1183		Windham county towns of Canterbury town, Plainfield town

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

C O N F I C U T continued

METROPOLITAN FMR AREAS

	0 BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA.....	1050	1229	1499	2009	2220	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT PMSA.....	530	715	887	1105	1239	Litchfield county towns of Bethleham 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.....	525	636	793	990	1109	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES

	0 BR 1	BR 2	BR 3	BR 4	BR	Towns within non metropolitan counties
Hartford.....	412	668	755	1048	1236	Hartland town
Litchfield.....	481	655	873	1090	1240	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.....	711	807	1076	1499	1768	Chester town, Deep River town, Essex town Westbrook town
New London.....	603	738	839	1083	1373	Lyme town, Voluntown town
Tolland.....	412	668	755	1048	1056	Union town
Windham.....	475	581	755	945	1185	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

	0 BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Dover, DE MSA.....	553	612	697	904	1029	Kent
Wilmington-Newark, DE-MD PMSA.....	511	675	787	1068	1291	New Castle

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Sussex..... 486 516 659 866 925

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS

	0 BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
*Washington, DC-MD-VA.....	766	871	1021	1392	1679	District of Columbia

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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F L O R I D A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Daytona Beach, FL MSA.....	440	516	660	877	931	Flagler, Volusia
*Fort Lauderdale, FL PMSA.....	569	670	831	1156	1358	Broward
Fort Myers-Cape Coral, FL MSA.....	473	546	658	920	959	Lee
Fort Pierce-Port Lucie, FL MSA.....	527	578	748	974	1049	Martin, St. Lucie
Fort Walton Beach, FL MSA.....	460	502	571	773	912	Okaloosa
Gainesville, FL MSA.....	460	502	611	837	989	Alachua
Jacksonville, FL MSA.....	527	590	711	939	1045	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA.....	440	483	546	677	738	Polk
Melbourne-Titusville-Palm Bay, FL MSA.....	440	515	645	863	1006	Brevard
*Miami, FL PMSA.....	539	678	846	1161	1346	Dade
Naples, FL MSA.....	491	693	835	1160	1293	Collier
Ocala, FL MSA.....	460	502	571	748	878	Marion
Orlando, FL MSA.....	572	649	773	1015	1239	Lake, Orange, Osceola, Seminole
Panama City, FL MSA.....	460	502	571	728	780	Bay
Pensacola, FL MSA.....	460	502	571	762	898	Escambia, Santa Rosa
Punta Gorda, FL MSA.....	460	528	703	975	1150	Charlotte
Sarasota-Bradenton, FL MSA.....	461	586	745	958	1043	Manatee, Sarasota
Tallahassee, FL MSA.....	470	522	686	897	1081	Gadsden, Leon
*Tampa-St. Petersburg-Clearwater, FL MSA.....	524	624	772	1027	1243	Hernando, Hillsborough, Pasco, Pinellas
*West Palm Beach-Boca Raton, FL MSA.....	600	639	866	1150	1424	Palm Beach

NONMETROPOLITAN COUNTIES

0 BR 1 BR 2 BR 3 BR 4 BR

Baker.....	432	472	535	664	720	Bradford.....	432	472	535	664	720
Calhoun.....	432	472	535	664	720	Citrus.....	432	472	535	664	720
Columbia.....	432	472	535	664	720	Desoto.....	432	472	535	664	720
Dixie.....	432	472	535	664	720	Franklin.....	432	472	535	664	720
Gilchrist.....	432	472	535	664	720	Glades.....	432	472	535	664	720
Gulf.....	432	472	535	664	720	Hamilton.....	432	472	535	664	720
Hardee.....	432	472	535	664	720	Hendry.....	432	472	550	690	773
Highlands.....	432	472	535	666	744	Holmes.....	432	472	535	664	720
Indian River.....	432	540	694	868	972	Jackson.....	432	472	535	664	720
Jefferson.....	432	472	535	664	720	Lafayette.....	432	472	535	664	720
Levy.....	432	472	535	664	720	Liberty.....	432	472	535	664	720
Madison.....	432	472	535	664	720	Monroe.....	618	697	897	1236	1471
Okeechobee.....	432	472	535	664	727	Putnam.....	432	472	535	664	720
Sumter.....	432	472	535	664	720	Suwannee.....	432	472	535	664	720
Taylor.....	432	472	535	664	721	Union.....	432	472	535	664	720
Wakulla.....	432	472	535	664	720	Walton.....	432	472	535	688	860
Washington.....	432	472	535	664	720						

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

G E O R G I A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Albany, GA MSA..... 343 401 490 669 725 Dougherty, Lee
 Athens, GA MSA..... 422 456 589 805 969 Clarke, Madison, Oconee
 *Atlanta, GA MSA..... 733 815 951 1268 1534 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..... 433 517 611 829 981 Columbia, McDuffie, Richmond
 Chattanooga, TN-GA MSA..... 414 484 581 751 855 Catoosa, Dade, Walker
 Columbus, GA-AL MSA..... 396 440 529 691 750 Chattahoochee, Harris, Muscogee
 Macon, GA MSA..... 444 494 575 793 814 Bibb, Houston, Jones, Peach, Twiggs
 Savannah, GA MSA..... 413 513 598 806 838 Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Appling..... 314 378 462 599 681 Atkinson..... 314 378 462 599 681
 Bacon..... 314 378 462 599 681 Baker..... 314 378 462 599 681
 Baldwin..... 314 401 490 628 685 Banks..... 314 378 462 599 681
 Ben Hill..... 314 378 462 599 690 Berrien..... 314 378 462 599 681
 Bleckley..... 314 378 462 599 681 Brantley..... 314 378 462 599 681
 Brooks..... 314 378 462 599 681 Bulloch..... 378 383 494 636 807
 Burke..... 314 378 462 599 681 Butts..... 314 416 551 737 773
 Calhoun..... 314 378 462 599 681 Camden..... 438 497 555 773 914
 Candler..... 314 378 462 599 681 Charlton..... 314 378 462 599 681
 Chattooga..... 314 378 462 599 681 Clay..... 314 378 462 599 681
 Clinch..... 314 378 462 599 681 Coffee..... 314 378 462 599 690
 Colquitt..... 314 378 462 599 681 Cook..... 314 378 462 599 681
 Crawford..... 314 378 462 599 681 Crisp..... 317 378 462 599 681
 Dawson..... 314 409 543 680 838 Decatur..... 314 378 462 599 681
 Dodge..... 314 378 462 599 681 Dooley..... 314 378 462 599 681
 Early..... 314 378 462 599 681 Echols..... 314 378 462 599 681
 Elbert..... 314 378 462 599 681 Emanuel..... 314 378 462 599 681
 Evans..... 314 378 462 599 681 Fannin..... 314 378 462 599 681
 Floyd..... 314 378 463 611 681 Franklin..... 314 378 462 599 681
 Gilmer..... 314 378 462 599 681 Glascock..... 314 378 462 599 681
 Glynn..... 437 490 554 745 913 Gordon..... 372 378 471 607 776
 Grady..... 320 378 462 599 681 Greene..... 314 378 462 599 681
 Habersham..... 336 378 462 599 686 Hall..... 332 504 593 744 829
 Hancock..... 314 378 462 599 681 Haralson..... 314 378 462 599 681
 Hart..... 314 378 462 599 681 Heard..... 314 378 462 599 681
 Irwin..... 314 378 462 599 681 Jackson..... 348 378 474 599 781
 Jasper..... 314 378 468 636 681 Jeff Davis..... 314 378 462 599 681
 Jefferson..... 314 378 462 599 690 Jenkins..... 314 378 462 599 681

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

G E O R G I A continued

NONMETROPOLITAN COUNTIES		0 BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES		0 BR 1 BR 2 BR 3 BR 4 BR
Johnson.....	314 378 462 599 681		Lamar.....	314 387 462 599 732	
Lanier.....	314 378 462 599 681		Laurens.....	321 378 462 599 681	
Liberty.....	390 435 496 689 694		Lincoln.....	314 378 462 599 681	
Long.....	314 409 462 599 681		Lowndes.....	351 425 514 721 798	
Lumpkin.....	314 423 475 637 781		Mcintosh.....	314 378 462 599 681	
Macon.....	314 378 462 599 681		Marion.....	314 378 462 599 681	
Meriwether.....	314 378 462 599 681		Miller.....	314 378 462 599 681	
Mitchell.....	314 378 462 599 681		Monroe.....	314 378 462 608 681	
Montgomery.....	314 378 462 599 681		Morgan.....	314 378 478 599 681	
Murray.....	314 378 462 599 681		Oglethorpe.....	314 378 462 599 681	
Pierce.....	314 378 462 599 681		Pike.....	365 394 500 696 702	
Polk.....	314 378 462 626 681		Pulaski.....	314 378 462 599 681	
Putnam.....	314 378 462 599 690		Quitman.....	314 378 462 599 681	
Rabun.....	314 378 462 599 681		Randolph.....	314 378 462 599 681	
Schley.....	314 378 462 599 681		Scriven.....	314 378 462 599 681	
Seminole.....	314 378 462 599 681		Stephens.....	314 378 462 599 681	
Stewart.....	314 378 462 599 681		Sumter.....	314 383 462 599 681	
Talbot.....	314 378 462 599 681		Taliaferro.....	314 378 462 599 681	
Tattnall.....	314 378 462 599 681		Taylor.....	314 378 462 599 681	
Telfair.....	314 378 462 599 681		Terrell.....	314 378 462 599 681	
Thomas.....	314 388 462 599 681		Tift.....	314 378 462 599 681	
Toombs.....	314 378 462 599 681		Towns.....	314 378 462 599 681	
Treutlen.....	314 378 462 599 681		Troup.....	314 427 481 601 681	
Turner.....	314 378 462 599 681		Union.....	314 378 482 604 681	
Upson.....	325 378 462 599 681		Ware.....	346 388 462 599 719	
Warren.....	314 378 462 599 681		Washington.....	314 378 462 599 681	
Wayne.....	325 378 462 599 681		Webster.....	314 378 462 599 681	
Wheeler.....	314 378 462 599 681		White.....	314 378 462 599 696	
Whitfield.....	314 412 496 633 747		Wilcox.....	314 378 462 599 681	
Wilkes.....	314 378 462 599 681		Wilkinson.....	314 378 462 599 681	
Worth.....	314 378 462 599 681				

H A W A I I

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS		0 BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE	
Honolulu, HI MSA.....	645 773 910 1229 1329		Honolulu	

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

H A W A I I continued

NONMETROPOLITAN COUNTIES	0 BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	0 BR 1 BR 2 BR 3 BR 4 BR
Hawaii.....	502 655 754 1001 1233	Kauai.....	641 958 1166 1545 1670
Maui.....	811 1006 1227 1586 1796		

I D A H O

METROPOLITAN FMR AREAS

	0 BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE

Boise City, ID MSA.....	438 499 607 844 997	Ada, Canyon
Pocatello, ID MSA.....	315 365 469 638 755	Bannock

NONMETROPOLITAN COUNTIES	0 BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	0 BR 1 BR 2 BR 3 BR 4 BR

Adams.....	313 362 468 619 734	Bear Lake.....	313 362 468 619 734
Benewah.....	313 362 468 619 734	Bingham.....	332 362 468 619 734
Blaine.....	484 533 709 989 1164	Boise.....	313 403 468 619 734
Bonner.....	359 445 551 763 879	Bonneville.....	318 400 551 742 904
Boundary.....	313 362 468 619 734	Butte.....	313 362 468 619 734

Camas.....	313 362 468 619 734	Caribou.....	313 362 468 619 734
Cassia.....	313 362 468 619 734	Clark.....	313 362 468 619 734
Clearwater.....	313 362 468 619 734	Custer.....	313 362 468 619 734
Elmore.....	313 362 468 619 734	Franklin.....	313 362 468 619 734
Fremont.....	313 362 468 619 734	Gem.....	313 362 468 619 734

Gooding.....	313 362 468 619 734	Idaho.....	313 362 468 619 734
Jefferson.....	321 362 468 619 734	Jerome.....	313 362 468 619 734
Kootenai.....	397 468 612 851 1007	Latah.....	313 362 468 619 744
Lemhi.....	313 362 468 619 734	Lewis.....	313 362 468 619 734
Lincoln.....	313 362 468 619 734	Madison.....	313 362 468 619 734

Minidoka.....	313 362 468 619 734	Nez Perce.....	318 362 468 619 734
Oneida.....	314 362 468 619 734	Owyhee.....	313 362 468 619 734
Payette.....	313 362 468 619 734	Power.....	313 362 468 619 734
Shoshone.....	313 362 468 619 734	Teton.....	341 362 468 632 749
Twin Falls.....	313 362 473 624 734	Valley.....	325 362 468 619 734

Washington.....	313 362 468 619 734

I L L I N O I S

METROPOLITAN FMR AREAS

	0 BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE

Bloomington-Normal, IL MSA.....	387 472 632 879 928	Mclean
Champaign-Urbana, IL MSA.....	426 523 678 929 1113	Champaign
*Chicago, IL.....	675 809 965 1207 1351	Cook, Dupage, Kane, Lake, McHenry, Will
Davenport-Moline-Rock Island, IA-IL MSA.....	317 438 543 702 761	Henry, Rock Island

* 50th percentile areas are indicated by an * before the MSA name.

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1.10% REVISED FY 2001 PAYMENT STANDARD

I L L I N O I S continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Decatur, IL MSA..... 308 399 514 694 719 Macon
 De Kalb County, IL..... 520 605 767 1066 1234 Dekalb
 Grundy County, IL..... 455 526 698 922 981 Grundy
 Kankakee, IL PMSA..... 414 501 667 853 937 Kankakee
 Kendall County, IL..... 585 666 802 1118 1124 Kendall

Peoria-Pekin, IL MSA..... 430 473 634 846 1039 Peoria, Tazewell, Woodford
 Rockford, IL MSA..... 412 527 643 808 942 Boone, Ogle, Winnebago
 *St. Louis, MO-IL MSA..... 429 522 677 881 974 Clinton, Jersey, Madison, Monroe, St. Clair
 Springfield, IL MSA..... 355 439 587 781 888 Menard, Sangamon

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Adams..... 296 332 427 562 682 Alexander..... 296 332 427 562 630
 Bond..... 296 332 427 562 630 Brown..... 296 332 427 562 630
 Bureau..... 296 373 438 562 630 Calhoun..... 296 332 427 562 630
 Carroll..... 296 332 427 562 630 Cass..... 297 332 427 562 630
 Christian..... 318 332 430 564 630 Clark..... 296 332 427 562 630
 Clay..... 296 332 427 562 630 Coles..... 313 372 496 658 779
 Crawford..... 296 332 427 562 630 Cumberland..... 296 332 427 562 630
 De Witt..... 301 332 427 566 630 Douglas..... 316 332 427 562 630
 Edgar..... 296 332 427 562 630 Edwards..... 296 332 427 562 630
 Effingham..... 296 342 427 562 630 Fayette..... 296 332 427 562 630
 Ford..... 281 396 514 662 722 Franklin..... 296 332 427 562 630
 Fulton..... 305 341 440 578 650 Gallatin..... 296 332 427 562 630
 Greene..... 296 332 427 562 630 Hamilton..... 296 333 427 562 630
 Hancock..... 296 332 427 562 630 Hardin..... 296 332 427 562 630
 Henderson..... 296 332 427 562 630 Iroquois..... 296 332 427 562 630
 Jackson..... 359 360 456 646 723 Jasper..... 296 334 427 562 630
 Jefferson..... 297 348 436 594 630 Jo Daviess..... 328 355 427 562 630
 Johnson..... 296 332 427 562 630 Knox..... 296 332 427 562 652
 La Salle..... 359 421 562 759 851 Lawrence..... 296 332 427 562 630
 Lee..... 330 339 455 567 638 Livingston..... 296 365 487 628 685
 Logan..... 331 353 470 588 736 McDonough..... 296 338 427 562 676
 Macoupin..... 296 332 427 562 630 Marion..... 302 332 427 562 630
 Marshall..... 296 332 427 562 630 Mason..... 296 332 427 562 639
 Massac..... 297 332 427 562 630 Mercer..... 296 332 427 562 630
 Montgomery..... 296 332 427 562 630 Morgan..... 296 375 499 666 701
 Moultrie..... 296 332 427 577 630 Perry..... 297 332 427 562 630
 Platt..... 296 360 469 639 656 Pike..... 296 332 427 562 630
 Pope..... 296 332 427 562 630 Pulaski..... 296 332 427 562 630
 Putnam..... 296 332 427 562 630 Randolph..... 296 332 427 562 630

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Richland.....	296	332	427	562	630	Saline.....	296	332	427	562	630
Schuyler.....	296	332	427	562	630	Scott.....	296	332	427	562	630
Shelby.....	296	332	427	562	630	Stark.....	296	332	427	562	630
Stephenson.....	313	358	453	566	636	Union.....	296	332	427	562	630
Vermilion.....	296	378	472	590	662	Wabash.....	296	332	427	562	667
Warren.....	313	332	427	562	630	Washington.....	296	355	473	592	769
Wayne.....	296	332	427	562	630	White.....	296	332	427	562	630
Whiteside.....	313	356	474	593	669	Williamson.....	296	332	430	598	630

I N D I A N A

METROPOLITAN FMR AREAS

Counties of FMR AREA within STATE

0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
421	545	724	1008	1190	Monroe
362	465	624	836	903	Dearborn
425	485	613	784	900	Elkhart
364	433	563	703	787	Posey, Vanderburgh, Warrick
364	463	577	744	807	Adams, Allen, De Kalb, Huntington, Wells, Whitley
462	607	758	952	1063	Lake, Porter
416	521	626	784	879	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison
392	462	603	776	846	Marion, Morgan, Shelby
396	503	670	932	1103	Howard, Tipton
387	498	612	844	889	Clinton, Tippecanoe
405	504	599	811	957	Clark, Floyd, Harrison, Scott
338	380	486	627	690	Delaware
365	486	638	797	894	St. Joseph
329	385	491	613	684	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bartholomew.....	455	488	590	736	970	Benton.....	319	360	461	593	653
Blackford.....	319	360	475	594	667	Brown.....	319	424	560	777	805
Carroll.....	319	360	461	593	653	Cass.....	319	360	461	593	653
Crawford.....	319	360	461	593	653	Daviess.....	319	360	461	593	653
Decatur.....	319	391	499	646	703	Dubois.....	319	360	461	593	673
Fayette.....	338	382	487	627	737	Fountain.....	319	360	461	593	653
Franklin.....	319	360	461	593	730	Fulton.....	353	369	461	620	653
Gibson.....	319	360	461	593	653	Grant.....	336	360	461	595	653
Greene.....	319	360	461	593	653	Henry.....	352	395	505	652	715
Jackson.....	393	411	508	672	722	Jasper.....	319	388	461	593	653
Jay.....	319	360	461	593	653	Jefferson.....	319	360	461	593	653

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

I N D I A N A continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jennings.....	333	360	461	593	653	Knox.....	348	385	500	636	701
Kosciusko.....	319	423	511	664	717	Lagrange.....	326	375	478	623	724
La Porte.....	326	394	527	676	737	Lawrence.....	319	360	461	598	653
Marshall.....	380	385	511	643	717	Martin.....	319	360	461	593	653
Miami.....	319	360	461	593	653	Montgomery.....	460	484	603	767	848
Newton.....	333	360	461	593	653	Noble.....	369	377	469	603	669
Orange.....	319	360	461	593	653	Owen.....	319	360	461	593	683
Parke.....	319	360	461	593	682	Perry.....	319	360	461	593	653
Pike.....	319	360	461	593	653	Pulaski.....	319	360	461	593	653
Putnam.....	347	405	498	669	675	Randolph.....	319	360	461	593	653
Ripley.....	319	360	461	602	683	Rush.....	329	360	461	593	683
Spencer.....	319	360	461	593	653	Starke.....	319	360	461	593	653
Steuben.....	392	442	528	662	737	Sullivan.....	319	360	461	593	653
Switzerland.....	319	360	461	593	653	Union.....	319	360	461	593	653
Wabash.....	319	360	461	593	653	Warren.....	319	360	461	593	653
Washington.....	319	360	461	593	653	Wayne.....	386	433	556	715	786
White.....	319	360	461	593	721						

I O W A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Cedar Rapids, IA MSA.....	309	437	563	783	841	Linn
Davenport-Moline-Rock Island, IA-IL MSA.....	317	438	543	702	761	Scott
Des Moines, IA MSA.....	403	509	628	814	855	Dallas, Polk, Warren
Dubuque, IA MSA.....	330	403	517	663	808	Dubuque
Iowa City, IA MSA.....	390	502	646	897	1060	Johnson
Omaha, NE-IA MSA.....	381	521	658	863	969	Pottawattamie
Sioux City, IA-NE MSA.....	387	465	580	723	826	Woodbury
Waterloo-Cedar Falls, IA MSA.....	362	464	580	772	907	Black Hawk

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Adair.....	301	371	465	592	653	Adams.....	301	371	465	592	653
Allamakee.....	301	371	465	599	685	Appanoose.....	301	371	465	592	657
Audubon.....	301	371	465	592	653	Benton.....	308	371	465	592	653
Boone.....	301	395	465	599	709	Bremer.....	301	371	465	592	694
Buchanan.....	316	371	465	592	653	Buena Vista.....	317	371	465	592	653
Butler.....	319	371	465	592	653	Calhoun.....	301	371	465	592	653
Carroll.....	301	371	465	592	653	Cass.....	301	371	465	592	653
Cedar.....	301	377	465	592	653	Cerro Gordo.....	301	394	487	650	682
Cherokee.....	301	371	465	592	653	Chickasaw.....	301	371	465	592	653

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

I O W A continued

NONMETROPOLITAN COUNTIES							0	BR 1	BR 2	BR 3	BR 4	NONMETROPOLITAN COUNTIES							0	BR 1	BR 2	BR 3	BR 4	
Clarke.....	308	371	465	592	653			Clay.....	301	371	465	592	653				Clay.....	301	371	465	592	653		
Clayton.....	301	371	465	592	653			Clinton.....	301	371	465	592	653				Clinton.....	301	371	473	592	662		
Crawford.....	301	371	465	592	653			Davis.....	301	371	465	592	653				Davis.....	301	371	465	592	653		
Decatur.....	301	371	465	592	653			Delaware.....	301	371	465	592	653				Delaware.....	301	371	465	592	653		
Des Moines.....	301	384	492	618	690			Dickinson.....	301	371	465	592	653				Dickinson.....	301	371	465	592	653		
Emmet.....	301	371	465	592	690			Fayette.....	301	371	465	592	690				Fayette.....	301	371	465	592	653		
Floyd.....	327	371	465	592	653			Franklin.....	308	371	465	592	653				Franklin.....	308	371	465	592	653		
Fremont.....	330	371	465	592	688			Greene.....	301	371	465	592	653				Greene.....	301	371	465	592	653		
Grundy.....	301	371	465	592	671			Guthrie.....	301	371	465	592	671				Guthrie.....	301	371	465	592	686		
Hamilton.....	343	390	472	592	660			Hancock.....	301	371	465	592	660				Hancock.....	301	371	465	592	653		
Hardin.....	301	371	465	592	653			Harrison.....	301	371	465	592	653				Harrison.....	301	371	465	592	653		
Henry.....	301	381	484	605	685			Howard.....	301	371	465	592	685				Howard.....	301	371	465	592	682		
Humboldt.....	301	371	465	592	653			Ida.....	308	371	465	592	653				Ida.....	308	371	465	592	653		
Iowa.....	301	371	465	592	653			Jackson.....	301	371	465	592	653				Jackson.....	301	371	470	592	657		
Jasper.....	301	381	483	603	677			Jefferson.....	301	371	465	592	653				Jefferson.....	301	371	470	592	657		
Jones.....	310	371	465	592	653			Keokuk.....	301	371	465	592	653				Keokuk.....	301	371	465	592	653		
Kossuth.....	301	371	465	592	653			Lee.....	301	371	465	592	653				Lee.....	301	371	481	602	676		
Louisa.....	301	371	465	592	653			Lucas.....	301	371	465	592	653				Lucas.....	301	371	465	592	653		
Lyon.....	301	371	465	592	653			Madison.....	301	371	465	592	653				Madison.....	301	371	485	621	681		
Mahaska.....	301	371	465	592	653			Marion.....	301	371	465	592	653				Marion.....	301	413	505	632	709		
Marshall.....	331	409	513	652	720			Mills.....	301	401	474	595	664				Mills.....	301	401	474	595	664		
Mitchell.....	301	371	465	592	653			Monona.....	301	371	465	592	653				Monona.....	301	371	465	592	653		
Monroe.....	301	392	465	592	688			Montgomery.....	330	373	465	592	653				Montgomery.....	330	373	465	592	653		
Muscatine.....	343	425	564	750	788			O'Brien.....	301	371	465	592	653				O'Brien.....	301	371	465	592	653		
Osceola.....	301	371	465	592	653			Page.....	301	371	465	592	653				Page.....	301	371	465	592	653		
Palo Alto.....	301	371	465	592	653			Plymouth.....	301	371	465	592	653				Plymouth.....	301	371	487	608	682		
Pocahontas.....	301	371	465	592	653			Poweshiek.....	317	395	505	632	709				Poweshiek.....	317	395	505	632	709		
Ringgold.....	301	371	465	592	653			Sac.....	301	371	465	592	653				Sac.....	301	371	465	592	653		
Shelby.....	301	371	465	592	653			Sioux.....	301	371	465	592	653				Sioux.....	301	371	465	592	653		
Story.....	392	475	562	775	889			Tama.....	301	371	465	592	653				Tama.....	301	371	465	592	653		
Taylor.....	301	371	465	592	654			Union.....	301	371	465	592	654				Union.....	301	371	465	592	688		
Van Buren.....	301	371	465	592	653			Wapello.....	301	371	465	592	653				Wapello.....	301	371	471	592	658		
Washington.....	301	371	465	592	688			Wayne.....	301	371	465	592	688				Wayne.....	301	371	465	592	653		
Webster.....	301	371	473	595	663			Winnebago.....	301	378	465	592	663				Winnebago.....	301	378	465	592	653		
Winnehiiek.....	301	371	465	592	653			Worth.....	301	371	465	592	653				Worth.....	301	371	465	592	663		
Wright.....	301	371	465	592	653																			

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

K A N S A S

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

*Kansas City, MO-KS MSA..... 479 503 727 1004 1113 Johnson, Leavenworth, Miami, Wyandotte
 Lawrence, KS MSA..... 400 479 615 857 987 Douglas
 Topeka, KS MSA..... 375 432 563 761 858 Shawnee
 *Wichita, KS MSA..... 392 471 630 852 922 Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Allen.....	306	347	446	575	640	Anderson.....	306	347	446	575	640
Atchison.....	306	347	446	575	685	Barber.....	306	347	446	575	640
Barton.....	306	347	446	575	640	Bourbon.....	306	347	446	575	640
Brown.....	306	347	446	575	640	Chase.....	306	347	446	575	640
Chautauqua.....	306	347	446	575	640	Cherokee.....	306	347	446	575	640
Cheyenne.....	306	347	446	575	640	Clark.....	306	347	446	575	640
Clay.....	306	347	446	575	640	Cloud.....	306	347	446	575	640
Coffey.....	316	347	446	575	668	Conanche.....	306	347	446	575	640
Cowley.....	327	347	446	589	640	Crawford.....	306	347	453	575	640
Decatur.....	306	347	446	575	640	Dickinson.....	306	347	446	575	640
Doniphan.....	306	347	446	575	640	Edwards.....	306	347	446	575	640
Elk.....	306	347	446	575	640	Ellis.....	306	347	446	575	640
Ellsworth.....	306	347	446	575	640	Finney.....	401	429	549	716	905
Ford.....	352	417	517	653	735	Franklin.....	344	361	465	597	728
Geary.....	377	396	495	640	693	Gove.....	306	347	446	575	640
Graham.....	306	347	446	575	640	Grant.....	317	403	461	631	689
Gray.....	306	347	446	575	640	Greeley.....	306	347	446	575	640
Greenwood.....	306	347	446	575	640	Hamilton.....	306	347	446	575	640
Harper.....	306	347	446	575	640	Haskell.....	306	356	446	575	640
Hodgeman.....	306	347	446	575	640	Jackson.....	306	347	446	575	640
Jefferson.....	306	347	453	602	640	Jewell.....	306	347	446	575	640
Kearny.....	341	347	458	617	678	Kingman.....	306	347	446	575	640
Kiowa.....	306	347	446	575	640	Labette.....	306	347	446	575	640
Lane.....	306	347	446	575	640	Lincoln.....	306	347	446	575	640
Linn.....	306	347	446	575	640	Logan.....	306	347	446	575	640
Lyon.....	306	347	446	575	682	Mcpherson.....	308	347	446	575	640
Marion.....	306	347	446	575	640	Marshall.....	306	347	446	575	640
Meade.....	306	347	446	575	640	Mitchell.....	306	347	446	575	640
Montgomery.....	306	347	446	575	640	Morris.....	306	347	446	575	640
Morton.....	306	373	446	575	640	Nemaha.....	306	347	446	575	640
Neosho.....	306	347	446	575	640	Ness.....	306	347	446	575	640
Norton.....	306	347	446	575	640	Osage.....	306	347	446	575	640
Osborne.....	306	347	446	575	641	Ottawa.....	306	347	446	575	640
Pawnee.....	306	347	446	575	640	Phillips.....	306	347	446	575	640

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Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

K A N S A S continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pottawatomie.....	306	347	446	575	654	Pratt.....	306	347	446	587	640
Rawlins.....	306	347	446	575	640	Reno.....	306	347	446	575	694
Republic.....	306	347	446	575	640	Rice.....	306	347	446	575	640
Riley.....	380	419	558	696	846	Rooks.....	306	347	446	575	640
Rush.....	306	347	446	575	640	Russell.....	306	347	446	575	640
Saline.....	400	414	546	755	763	Scott.....	306	347	446	587	675
Seward.....	369	403	536	671	748	Sheridan.....	306	347	446	575	640
Sherman.....	306	347	446	575	640	Smith.....	306	347	446	575	640
Stafford.....	306	347	446	575	640	Stanton.....	306	347	446	575	640
Stevens.....	306	348	446	575	657	Sumner.....	306	347	446	602	640
Thomas.....	306	347	446	575	640	Trego.....	306	347	446	575	640
Wabaunsee.....	306	347	446	575	640	Wallace.....	306	347	446	575	640
Washington.....	306	347	446	575	640	Wichita.....	306	347	458	575	714
Wilson.....	306	347	446	575	640	Woodson.....	306	347	446	575	640

K E N T U C K Y

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Cincinnati, OH-KY-IN.....	362	465	624	836	903	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA.....	384	430	505	689	708	Christian
Evansville-Henderson, IN-KY MSA.....	364	433	563	703	787	Henderson
Gallatin County, KY.....	305	414	509	638	833	Gallatin
Grant County, KY.....	303	360	477	667	789	Grant
Huntington-Ashland, WV-KY-OH MSA.....	343	403	496	632	697	Boyd, Carter, Greenup
Lexington, KY MSA.....	390	485	593	810	915	Bourbon, Clark, Fayette, Jessamine, Madison, Scott
Louisville, KY-IN MSA.....	387	498	612	844	889	Bullitt, Jefferson, Oldham
Owensboro, KY MSA.....	340	352	462	620	650	Daviess
Pendleton County, KY.....	305	354	471	592	662	Pendleton

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Adair.....	279	341	404	534	586	Allen.....	279	326	404	521	586
Anderson.....	307	326	422	526	591	Ballard.....	279	326	404	521	586
Barren.....	279	338	404	521	586	Bath.....	279	326	404	521	586
Bell.....	279	326	407	521	586	Boyle.....	332	336	449	562	630
Bracken.....	279	326	404	521	586	Breathitt.....	279	326	404	521	586
Breckinridge.....	279	326	404	521	586	Butler.....	279	326	404	521	586
Caldwell.....	279	326	404	521	586	Calloway.....	279	326	404	521	586
Carlisle.....	279	326	404	521	586	Carroll.....	279	326	404	521	586
Casey.....	279	326	404	521	586	Clay.....	279	326	404	521	586
Clinton.....	279	326	404	521	586	Crittenden.....	279	326	404	521	586

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4	BR
Cumberland.....	279	326	404	521	586	Edmonson.....	279	326	404	521	586
Elliott.....	279	326	404	521	586	Estill.....	279	326	404	521	586
Fleming.....	279	326	404	521	586	Floyd.....	294	357	404	559	642
Franklin.....	279	411	503	650	821	Fulton.....	279	326	404	521	586
Garrard.....	279	326	404	521	586	Graves.....	279	326	404	521	586
Grayson.....	279	326	404	521	586	Green.....	279	326	404	521	586
Hancock.....	279	326	404	525	623	Hardin.....	346	356	446	600	711
Harlan.....	279	424	483	631	745	Harrison.....	279	327	413	521	638
Hart.....	279	326	404	521	586	Henry.....	279	326	404	521	586
Hickman.....	279	326	404	521	586	Hopkins.....	279	326	404	521	591
Jackson.....	279	326	404	521	586	Johnson.....	279	326	404	521	586
Knott.....	279	326	404	521	586	Knox.....	279	385	495	619	761
Larue.....	279	326	404	521	586	Laurel.....	365	412	489	659	683
Lawrence.....	279	326	404	521	586	Lee.....	279	326	404	521	586
Leslie.....	279	326	404	521	586	Letcher.....	279	326	404	521	586
Lewis.....	279	326	404	521	586	Lincoln.....	279	326	404	521	586
Livingston.....	322	326	434	603	607	Logan.....	279	326	404	531	586
Lyon.....	279	326	404	521	586	McCracken.....	316	340	425	545	698
McCreary.....	279	326	404	521	586	McLean.....	279	326	404	521	586
Magoffin.....	279	326	404	521	586	Marion.....	279	326	404	521	586
Marshall.....	279	332	404	521	627	Martin.....	279	326	404	521	586
Mason.....	279	326	404	521	586	Meade.....	289	358	413	546	680
Menifee.....	279	326	404	521	586	Mercer.....	279	326	404	531	586
Metcalfe.....	279	326	404	521	586	Monroe.....	279	326	404	521	586
Montgomery.....	279	326	404	521	586	Morgan.....	279	326	404	521	586
Muhlenberg.....	279	326	404	521	586	Nelson.....	306	326	416	521	586
Nicholas.....	279	326	404	521	586	Ohio.....	279	326	404	521	586
Owen.....	279	326	404	521	600	Owsley.....	279	326	404	521	586
Perry.....	313	326	420	524	588	Pike.....	300	342	416	521	614
Powell.....	279	326	404	521	586	Pulaski.....	306	326	413	522	586
Robertson.....	279	326	404	521	586	Rockcastle.....	279	326	404	521	586
Rowan.....	279	326	404	521	607	Russell.....	279	326	404	521	586
Shelby.....	280	369	413	577	586	Simpson.....	279	348	409	522	586
Spencer.....	279	332	404	521	586	Taylor.....	336	398	446	597	675
Todd.....	279	326	404	521	586	Trigg.....	279	326	404	521	586
Trimble.....	279	326	404	521	586	Union.....	279	326	404	521	586
Warren.....	279	361	482	602	696	Washington.....	279	330	404	521	586
Wayne.....	279	326	404	521	586	Webster.....	279	326	404	521	586
Whitley.....	279	326	404	521	586	Wolfe.....	279	326	404	521	586

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1.10% REVISED FY 2001 PAYMENT STANDARD

L O U I S I A N A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Alexandria, LA MSA..... 317 396 437 689 699 Rapides
 *Baton Rouge, LA MSA..... 365 452 562 780 920 Ascension, East Baton Rouge, Livingston, West Baton Rouge
 Houma, LA MSA..... 313 366 469 651 771 Lafourche, Terrebonne
 Lafayette, LA MSA..... 331 382 453 625 740 Lafayette, Acadia, St. Landry, St. Martin
 Lake Charles, LA MSA..... 365 424 537 705 883 Calcasieu
 Monroe, LA MSA..... 342 384 512 690 717 Ouachita
 New Orleans, LA..... 413 474 590 803 972 Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles
 St. James Parish, LA..... 312 353 470 586 656 St. James
 Shreveport-Bossier City, LA MSA..... 386 438 551 737 905 Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Allen..... 305 330 407 534 594 Assumption..... 333 358 424 534 594
 Avoyelles..... 305 330 407 534 594 Beauregard..... 370 404 478 626 689
 Bienville..... 305 330 407 540 639 Caldwell..... 305 330 407 534 594
 Cameron..... 305 330 407 534 594 Catahoula..... 305 330 407 534 594
 Claiborne..... 305 330 407 534 594 Concordia..... 305 330 407 534 594
 De Soto..... 305 330 407 534 600 East Carroll..... 305 330 407 534 594
 East Feliciana..... 305 330 407 534 594 Evangeline..... 305 330 407 534 594
 Franklin..... 305 330 407 534 600 Grant..... 305 330 407 534 594
 Iberia..... 321 335 417 534 594 Iberville..... 305 330 407 534 613
 Jackson..... 305 330 407 534 594 Jefferson Davis..... 305 330 407 534 604
 La Salle..... 305 330 407 534 600 Lincoln..... 358 360 449 616 740
 Madison..... 305 330 407 534 594 Morehouse..... 305 330 407 534 594
 Natchitoches..... 325 333 430 595 600 Pointe Coupee..... 305 330 407 534 645
 Red River..... 305 330 407 534 600 Richland..... 305 330 407 534 600
 Sabine..... 305 339 407 534 628 St. Helena..... 305 330 407 534 594
 St. Mary..... 333 356 448 611 637 Tangipahoa..... 326 339 435 572 608
 Tensas..... 305 330 407 534 594 Union..... 305 330 407 534 600
 Vermilion..... 305 330 407 534 594 Vernon..... 348 390 444 575 679
 Washington..... 305 330 407 534 594 West Carroll..... 305 330 407 534 594
 West Feliciana..... 305 396 530 663 744 Winn..... 305 330 407 534 594

M A I N E

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Bangor, ME MSA..... 396 484 620 811 871 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 areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

M A I N E continued

METROPOLITAN FMR AREAS

Components of FMR AREA within STATE

	0 BR	1 BR	2 BR	3 BR	4 BR	
Lewiston-Auburn, ME MSA.....	365	440	566	709	805	Waldo county towns of Winterport town Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town 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 York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town
Portland, ME MSA.....	495	638	839	1050	1176	Towns within non metropolitan counties
Portsmouth-Rochester, NH-ME PMSA.....	578	693	890	1143	1400	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town Baldwin town, Bridgton town, Brunswick town Harpwell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	
Androscoggin.....	366	453	601	751	841	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 plantation, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Aroostook.....	366	431	551	702	808	
Cumberland.....	537	547	729	990	1137	
Franklin.....	374	431	551	702	808	
Hancock.....	394	484	599	755	838	
Kennebec.....	381	475	572	718	808	
Knox.....	366	472	612	818	861	
Lincoln.....	476	530	603	839	990	
Oxford.....	366	431	551	702	808	
Penobscot.....	366	431	551	702	808	

* 50th percentile areas are indicated by an * before the MSA name.

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1.10% REVISED FY 2001 PAYMENT STANDARD

M A I N E continued

NONMETROPOLITAN COUNTIES

0 BR 1 BR 2 BR 3 BR 4 BR Towns within non metropolitan counties

Piscataquis..... 366 431 551 702 808
 Sagadahoc..... 515 590 729 968 1197
 Somerset..... 383 438 551 702 828
 Waldo..... 366 431 551 702 808

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..... 366 431 551 702 808
 York..... 453 517 693 868 971

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

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Baltimore, MD..... 499 611 745 987 1129 Anne Arundel, Baltimore, Carroll, Harford, Howard
 Queen Anne's, Baltimore city
 Columbia, MD..... 643 864 1007 1331 1663
 Cumberland, MD-WV MSA..... 380 457 565 747 853 Allegany
 Hagerstown, MD PMSA..... 393 472 589 771 880 Washington
 *Washington, DC-MD-VA..... 766 871 1021 1392 1679 Calvert, Charles, Frederick, Montgomery, Prince George's
 Wilmington-Newark, DE-MD PMSA..... 511 675 787 1068 1291 Cecil

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Caroline..... 419 451 564 740 839
 Garrett..... 373 500 564 735 926
 St. Mary's..... 603 716 825 1151 1315
 Talbot..... 494 523 697 874 1146
 Worcester..... 373 451 565 784 839

Dorchester..... 373 483 564 735 839
 Kent..... 378 465 623 776 937
 Somerset..... 445 499 564 782 925
 Wicomico..... 421 486 628 797 879

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Barnstable-Yarmouth, MA MSA..... 561 751 1004 1257 1408 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 areas are indicated by an * before the ' MSA name.

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1.10% REVISED FY 2001 PAYMENT STANDARD

M A S A C H U S E T T S continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR	Components of FMR AREA within STATE
808 910 1138 1423 1671	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
540 711 873 1085 1238	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 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

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1.10% REVISED FY 2001 PAYMENT STANDARD

M A S A C H U S E T T S continued

METROPOLITAN FMR AREAS

	0	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Fitchburg-Leominster, MA MSA.....	422	593	771	991	1076		Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town 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 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 Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
Lawrence, MA-NH PMSA.....	585	706	889	1110	1366		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
Lowell, MA-NH PMSA.....	593	767	926	1160	1298		Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
New Bedford, MA PMSA.....	567	693	788	984	1106		Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town 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
Pittsfield, MA MSA.....	366	520	640	803	995		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
Providence-Fall River-Warwick, RI-MA MSA.....	430	586	704	884	1090		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, Milbury 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
Springfield, MA MSA.....	456	563	711	889	1094		
Worcester, MA-CT PMSA.....	525	636	793	990	1109		

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS

Components of FMR AREA within STATE

Uxbridge town, Webster town, Westborough town
West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES

Towns within non metropolitan counties

Barnstable..... 546 748 997 1248 1397 Bourne town, Falmouth town, Provincetown town
Berkshire..... 435 528 624 854 1024 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..... 737 749 998 1249 1400 Ashfield town, Bernardston town, Buckland town
Franklin..... 469 580 743 931 1124 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..... 473 645 861 1145 1412 Blandford town, Brimfield town, Chester town
Granville town, Tolland town, Wales town
Hampshire..... 663 671 896 1123 1256 Chesterfield town, Cummington town, Goshen town
Middlefield town, Pelham town, Plainfield town
Westhampton town, Worthington town

Nantucket..... 838 1123 1498 1873 2096 Athol town, Hardwick town, Hubbardston town
Worcester..... 527 550 733 918 1027 New Braintree town, Petersham town, Phillipston town
Royalston town, Warren town

M I C H I G A N

METROPOLITAN FMR AREAS

Counties of FMR AREA within STATE

Ann Arbor, MI PMSA..... 554 670 828 1086 1218 Lenawee, Livingston, Washtenaw
Benton Harbor, MI PMSA..... 431 435 572 715 801 Berrien
*Detroit, MI PMSA..... 473 641 775 969 1086 Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA..... 431 489 615 784 860 Genesee
*Grand Rapids-Muskegon-Holland, MI PMSA..... 471 551 673 842 943 Allegan, Kent, Muskegon, Ottawa

Jackson, MI PMSA..... 339 456 578 721 809 Jackson
Kalamazoo-Battle Creek, MI PMSA..... 400 484 610 763 852 Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI PMSA..... 451 530 686 897 1036 Clinton, Eaton, Ingham

• 50th percentile areas are indicated by an * before the' MSA name.

• Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

M I C H I G A N continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Saginaw-Bay City-Midland, MI MSA..... 394 434 578 721 809 Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Alcona..... 330 377 477 620 707 Alger..... 330 377 477 620 707
 Alpena..... 330 377 477 620 711 Antrim..... 330 396 477 620 707
 Arenac..... 330 377 477 620 707 Baraga..... 330 377 477 620 707
 Barry..... 330 408 541 650 761 Benzie..... 344 377 477 641 707
 Branch..... 383 392 481 657 707 Cass..... 330 377 479 655 707
 Charlevoix..... 401 406 514 699 724 Cheboygan..... 347 377 477 620 725
 Chippewa..... 330 377 477 620 707 Clare..... 342 377 477 620 707
 Crawford..... 361 377 487 657 707 Delta..... 330 377 477 620 707
 Dickinson..... 330 406 501 626 707 Emmet..... 369 442 523 685 730
 Gladwin..... 330 377 477 620 707 Gogebic..... 330 377 477 620 707

Grand Traverse..... 437 469 625 782 877 Gratiot..... 344 377 477 620 707
 Hillsdale..... 330 377 477 620 707 Houghton..... 330 377 477 620 707
 Huron..... 330 377 477 620 707 Ionia..... 405 410 513 640 720
 Iosco..... 330 377 477 620 749 Iron..... 330 377 477 620 707
 Isabella..... 369 394 527 711 865 Kalkaska..... 330 377 478 623 787

Keweenaw..... 330 377 477 620 707 Lake..... 333 377 477 620 707
 Leelanau..... 448 484 566 740 929 Luce..... 330 377 477 620 707
 Mackinac..... 330 377 477 620 707 Manistee..... 330 377 477 620 707
 Marquette..... 330 377 477 620 707 Mason..... 330 377 477 620 707
 Mecosta..... 330 377 477 646 767 Menominee..... 330 377 477 620 707
 Missaukee..... 347 377 477 620 707 Montcalm..... 395 446 564 733 836
 Montmorency..... 330 377 477 620 707 Newaygo..... 381 408 478 620 707
 Oceana..... 353 377 477 620 707 Ogemaw..... 343 378 477 620 707
 Ontonagon..... 330 377 477 620 707 Osceola..... 330 377 477 620 707
 Oscoda..... 330 377 477 620 707 Otsego..... 338 410 516 719 833
 Presque Isle..... 330 377 477 620 707 Roscommon..... 365 377 477 620 707
 St. Joseph..... 330 385 477 623 707 Sanilac..... 330 388 477 623 707
 Schoolcraft..... 330 377 477 620 707 Shiawassee..... 330 414 499 695 745
 Tuscola..... 359 392 523 653 730 Wexford..... 330 382 495 649 767

M I N N E S O T A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Duluth-Superior, MN-WI MSA..... 319 411 527 705 821 St. Louis
 Fargo-Moorhead, ND-MN MSA..... 384 528 639 887 950 Clay
 Grand Forks, ND-MN MSA..... 397 473 623 859 958 Polk

• 50th percentile areas are indicated by an * before the MSA name.

• Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

MINNESOTA continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

La Crosse, WI-MN MSA..... 323 417 529 709 859 Houston
 *Minneapolis-St. Paul, MN-WI MSA..... 567 730 933 1263 1431 Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey
 Scott, Sherburne, Washington, Wright
 Rochester, MN MSA..... 371 522 683 944 1060 Olmsted
 St. Cloud, MN MSA..... 369 478 565 714 911 Benton, Stearns

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Aitkin..... 307 398 530 666 742 Becker..... 303 434 488 612 685
 Beltrami..... 303 388 518 680 727 Big Stone..... 303 369 469 587 671
 Blue Earth..... 413 499 621 796 1010 Brown..... 303 392 469 587 671
 Carlton..... 303 369 469 587 671 Cass..... 303 369 469 587 671
 Chippewa..... 303 369 469 587 671 Clearwater..... 303 369 469 587 671
 Cook..... 359 369 482 658 685 Cottonwood..... 303 369 469 587 671
 Crow Wing..... 303 369 492 616 774 Dodge..... 303 369 469 587 671
 Douglas..... 303 369 469 587 671 Faribault..... 303 369 469 587 671
 Fillmore..... 303 369 469 587 671 Freeborn..... 303 369 477 628 673
 Goodhue..... 349 450 600 766 840 Grant..... 303 369 469 587 671
 Hubbard..... 309 369 469 587 671 Itasca..... 388 393 512 640 718
 Jackson..... 303 369 469 587 671 Kanabec..... 303 382 495 618 693
 Kandiyohi..... 373 472 574 720 867 Kittson..... 303 369 469 587 671
 Koochiching..... 367 373 497 620 813 Lac qui Parle..... 303 369 469 587 671
 Lake..... 303 369 469 587 671 Lake of the Woods..... 303 369 469 587 671
 Le Sueur..... 303 369 469 587 723 Lincoln..... 303 369 469 587 671
 Lyon..... 303 369 469 587 695 Mcleod..... 360 464 618 768 863
 Mahomen..... 303 369 469 587 671 Marshall..... 303 369 469 587 671
 Martin..... 303 369 469 587 671 Meeker..... 361 424 538 677 773
 Mille Lacs..... 321 369 470 654 770 Morrison..... 335 369 469 587 671
 Mower..... 303 369 469 587 671 Murray..... 303 369 469 587 671
 Nicollet..... 381 406 540 718 759 Nobles..... 303 369 469 587 671
 Norman..... 303 369 469 587 671 Otter Tail..... 303 369 469 587 671
 Pennington..... 303 369 469 626 671 Pine..... 334 369 469 590 671
 Pipestone..... 303 369 469 587 671 Pope..... 303 369 469 587 671
 Red Lake..... 303 383 469 587 671 Redwood..... 303 369 469 587 671
 Renville..... 303 369 469 587 671 Rice..... 359 490 655 816 915
 Rock..... 303 369 469 587 671 Roseau..... 367 373 489 631 689
 Sibley..... 303 369 469 587 671 Steele..... 359 417 555 694 777
 Stevens..... 344 436 492 616 691 Swift..... 303 369 469 587 671
 Todd..... 303 369 469 587 671 Traverse..... 303 369 469 587 671
 Wabasha..... 328 399 505 634 724 Wadena..... 303 369 469 587 671
 Waseca..... 395 433 551 691 789 Watonwan..... 303 369 469 587 671

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES				NONMETROPOLITAN COUNTIES			
0 BR 1	BR 2	BR 3	BR 4	0 BR 1	BR 2	BR 3	BR 4
Wilkin.....	303	369	469	587	671		
Yellow Medicine.....	303	369	469	587	671		
M I S S I S S I P P I							
METROPOLITAN FMR AREAS				Counties of FMR AREA within STATE			
0 BR 1	BR 2	BR 3	BR 4	0 BR 1	BR 2	BR 3	BR 4
Biloxi-Gulfport-Pascagoula, MS MSA.....	447	524	603	840	991	Hancock, Harrison, Jackson	
Hattiesburg, MS MSA.....	325	398	488	555	781	Forrest, Lamar	
Jackson, MS MSA.....	445	507	620	824	871	Hinds, Madison, Rankin	
Memphis, TN-AR-MS MSA.....	440	514	604	839	881	Desoto	
NONMETROPOLITAN COUNTIES							
0 BR 1	BR 2	BR 3	BR 4	0 BR 1	BR 2	BR 3	BR 4
Adams.....	278	330	409	525	591	Alcorn.....	278 330 409 525 591
Amite.....	278	330	409	525	591	Attala.....	278 330 409 525 591
Benton.....	278	330	409	525	591	Bolivar.....	316 330 425 531 606
Calhoun.....	278	330	409	525	591	Carroll.....	278 330 409 525 591
Chickasaw.....	278	330	409	525	591	Choctaw.....	278 330 409 525 591
Claiborne.....	278	330	409	525	591	Clarke.....	278 330 409 525 591
Clay.....	278	330	409	525	591	Coahoma.....	323 330 435 547 611
Copiah.....	278	330	409	525	591	Covington.....	278 330 409 525 591
Franklin.....	281	330	409	525	591	George.....	278 330 409 525 591
Greene.....	278	330	409	525	591	Grenada.....	278 331 409 558 591
Holmes.....	278	330	409	525	591	Humphreys.....	278 330 409 525 591
Issaquena.....	292	401	534	668	748	Itawamba.....	278 330 409 525 591
Jasper.....	278	330	409	525	591	Jefferson.....	278 330 409 525 591
Jefferson Davis.....	278	330	409	525	591	Jones.....	278 330 409 525 591
Kemper.....	280	330	409	525	591	Lafayette.....	281 385 514 644 720
Lauderdale.....	278	358	451	586	633	Lawrence.....	278 330 409 525 591
Leake.....	278	330	409	525	591	Lee.....	347 374 451 564 633
Leflore.....	278	330	409	526	632	Lincoln.....	278 330 409 525 591
Lowndes.....	343	370	438	550	620	Marion.....	278 330 409 525 591
Marshall.....	278	330	409	525	600	Monroe.....	278 330 409 525 591
Montgomery.....	278	330	409	525	591	Neshoba.....	278 330 409 525 591
Newton.....	278	330	409	525	591	Noxubee.....	282 330 409 525 591
Oktibbeha.....	341	355	434	603	712	Panola.....	288 330 409 525 591
Pearl River.....	292	330	409	527	591	Perry.....	278 330 409 525 591
Pike.....	282	330	409	525	591	Pontotoc.....	278 330 409 525 591
Prentiss.....	281	330	409	525	591	Quitman.....	278 330 409 525 591
Scott.....	278	330	409	525	591	Sharkey.....	282 330 409 525 591
Simpson.....	281	330	409	525	591	Smith.....	278 330 409 525 591

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

M I S S I P P I continued

NONMETROPOLITAN COUNTIES						NONMETROPOLITAN COUNTIES					
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4	BR
Stone.....	278	330	409	525	591	Sunflower.....	307	334	409	525	628
Tallahatchie.....	278	330	409	525	591	Tate.....	278	375	434	545	715
Tippah.....	278	330	409	525	591	Tishomingo.....	278	330	409	525	591
Tunica.....	278	330	409	525	591	Union.....	278	330	409	525	591
Walthall.....	278	330	409	525	591	Warren.....	278	364	453	627	751
Washington.....	301	357	477	617	680	Wayne.....	278	330	409	525	591
Webster.....	280	330	409	525	591	Wilkinson.....	278	330	409	525	591
Winston.....	278	330	409	525	591	Yalobusha.....	280	330	409	525	591
Yazoo.....	282	330	409	525	591						

M I S S O U R I

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Columbia, MO MSA.....	295	416	541	753	887	Boone
Joplin, MO MSA.....	288	333	442	582	626	Jasper, Newton
*Kansas City, MO-KS MSA.....	479	603	727	1004	1113	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA.....	276	335	448	565	628	Andrew, Buchanan
*St. Louis, MO-IL MSA.....	429	522	677	881	974	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln
Springfield, MO MSA.....	302	383	496	684	712	St. Charles, St. Louis, Warren, St. Louis city
						St. Christian, Greene, Webster

NONMETROPOLITAN COUNTIES

0 BR 1 BR 2 BR 3 BR 4 BR

Adair.....	271	339	449	566	679	Atchison.....	271	312	401	521	599
Audrain.....	289	312	401	542	627	Barry.....	271	321	401	521	599
Barton.....	271	312	401	521	599	Bates.....	271	312	401	521	611
Benton.....	305	312	416	521	599	Bollinger.....	271	312	401	521	599
Butler.....	271	312	401	521	599	Caldwell.....	271	314	423	529	599
Callaway.....	319	323	432	548	710	Camden.....	357	360	481	668	786
Cape Girardeau.....	279	343	456	607	745	Carroll.....	271	312	401	521	599
Carter.....	271	312	401	521	599	Cedar.....	271	312	401	521	599
Chariton.....	271	312	401	521	599	Clark.....	271	312	401	521	599
Cole.....	271	358	476	636	667	Cooper.....	271	312	401	521	599
Crawford.....	296	358	403	531	599	Dade.....	271	312	401	521	599
Dallas.....	271	312	401	521	599	Davies.....	271	312	401	521	599
Dekalb.....	280	312	401	528	599	Dent.....	271	312	401	521	599
Douglas.....	271	312	401	521	599	Dunklin.....	271	312	401	521	599
Gasconade.....	271	312	401	521	599	Gentry.....	271	312	401	521	599
Grundy.....	271	312	401	521	599	Harrison.....	271	312	401	521	599
Henry.....	308	314	420	526	690	Hickory.....	271	312	401	521	599
Holt.....	271	312	401	521	599	Howard.....	271	312	401	521	601
Howell.....	271	312	401	521	599	Iron.....	271	312	401	521	599

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

M I S S O U R I continued

NONMETROPOLITAN COUNTIES		0 BR	1 BR	2 BR	3 BR	4 BR
Johnson.....	325	364	474	628	743	
Laclede.....	271	312	401	526	599	
Lewis.....	271	312	401	521	599	
Livingston.....	271	312	403	521	599	
Macon.....	291	335	431	561	643	
Maries.....	271	312	401	521	599	
Mercer.....	271	312	401	521	599	
Mississippi.....	271	312	401	521	599	
Monroe.....	271	312	401	521	599	
Morgan.....	271	312	401	521	599	
Nodaway.....	286	346	426	541	653	
Osage.....	271	312	401	521	599	
Pemiscot.....	271	312	401	521	599	
Pettis.....	290	341	456	574	686	
Pike.....	271	312	401	521	629	
Pulaski.....	271	380	426	565	629	
Ralls.....	271	312	401	521	599	
Reynolds.....	271	312	401	521	599	
St. Clair.....	271	312	401	521	599	
St. Francois.....	296	373	473	593	777	
Schuyler.....	271	312	401	521	599	
Scott.....	325	328	438	592	682	
Shelby.....	314	334	417	531	599	
Stone.....	306	339	444	599	704	
Taney.....						
Vernon.....	271	312	401	535	599	
Wayne.....	271	312	401	521	599	
Wright.....	271	312	401	521	599	

M O N T A N A

METROPOLITAN FMR AREAS

COUNTIES OF FMR AREA WITHIN STATE		0 BR	1 BR	2 BR	3 BR	4 BR
Billings, MT MSA.....	374	435	581	782	949	Yellowstone
Great Falls, MT MSA.....	374	433	571	743	884	Cascade
Missoula, MT MSA.....	374	439	585	754	958	Missoula

NONMETROPOLITAN COUNTIES		0 BR	1 BR	2 BR	3 BR	4 BR
Knox.....	271	312	401	521	599	
Lawrence.....	287	319	401	521	599	
Linn.....	271	312	401	521	599	
McDonald.....	271	312	401	521	599	
Madison.....	271	312	401	521	599	
Marion.....	271	312	401	521	599	
Miller.....	296	358	401	526	621	
Moniteau.....	271	312	401	521	599	
Montgomery.....	287	330	424	551	632	
New Madrid.....	271	312	401	521	599	
Oregon.....	271	312	401	521	599	
Ozark.....	271	312	401	521	599	
Perry.....	328	333	446	593	624	
Phelps.....	280	336	431	586	634	
Polk.....	271	313	401	521	627	
Putnam.....	271	312	401	521	599	
Randolph.....	271	312	401	521	599	
Ripley.....	271	312	401	521	599	
Ste. Genevieve.....	271	321	416	531	673	
Saline.....	271	312	413	521	599	
Scotland.....	271	312	401	521	599	
Shannon.....	271	312	401	521	599	
Stoddard.....	271	312	401	521	599	
Sullivan.....	271	312	401	521	599	
Texas.....	271	312	401	521	599	
Washington.....	316	384	430	537	602	
Worth.....	271	312	401	521	599	

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

040301

1.10% REVISED FY 2001 PAYMENT STANDARD

M O N T A N A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4		
Beaverhead.....	336	388	513	666	779	Big Horn.....	336	388	513	666	779
Blaine.....	336	388	513	666	779	Broadwater.....	336	388	513	666	829
Carbon.....	383	449	584	759	886	Carter.....	336	412	513	666	779
Chouteau.....	336	388	513	666	779	Custer.....	336	388	513	666	779
Daniels.....	336	412	513	666	779	Dawson.....	336	388	513	666	779
Deer Lodge.....	336	388	513	666	779	Fallon.....	336	388	513	666	779
Fergus.....	336	388	513	666	779	Flathead.....	336	390	521	727	855
Gallatin.....	414	484	649	833	1065	Garfield.....	336	388	513	666	779
Glacier.....	336	388	513	666	779	Golden Valley.....	336	410	513	666	779
Granite.....	336	388	513	666	779	Hill.....	347	388	513	666	779
Jefferson.....	355	388	513	666	779	Judith Basin.....	336	412	513	666	779
Lake.....	366	388	513	666	779	Lewis and Clark.....	373	437	582	810	958
Liberty.....	336	388	513	666	779	Lincoln.....	366	388	513	666	779
McCone.....	336	409	513	666	779	Madison.....	343	388	513	666	779
Meagher.....	336	412	513	666	779	Mineral.....	336	388	513	666	795
Musselshell.....	342	388	513	666	779	Park.....	336	388	513	666	787
Petroleum.....	336	388	513	666	779	Phillips.....	336	388	513	666	779
Pondera.....	336	410	513	666	779	Powder River.....	336	394	513	666	779
Powell.....	342	388	513	666	779	Prairie.....	336	388	513	666	779
Ravalli.....	336	388	513	666	779	Richland.....	336	420	513	666	779
Roosevelt.....	352	388	513	666	779	Rosebud.....	336	388	513	666	779
Sanders.....	336	388	513	666	779	Sheridan.....	346	388	513	666	779
Silver Bow.....	336	388	513	666	779	Stillwater.....	343	388	513	666	779
Sweet Grass.....	362	388	513	666	779	Teton.....	336	388	513	666	779
Toole.....	343	388	513	666	779	Treasure.....	336	388	513	666	779
Valley.....	336	388	513	666	779	Wheatland.....	336	388	513	666	779
Wibaux.....	336	412	513	666	779						
N E R A S K A											
METROPOLITAN FMR AREAS											
0					BR 1	BR 2	BR 3	BR 4	Counties of FMR AREA within STATE		
					353	453	598	794	927	Lancaster	
Lincoln, NE MSA.....					381	521	658	863	969	Cass, Douglas, Sarpy, Washington	
Omaha, NE-IA MSA.....					387	465	580	723	826	Dakota	
Sioux City, IA-NE MSA.....											

N E B R A S K A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Lincoln, NE MSA.....	353	453	598	794	927	Lancaster
Omaha, NE-IA MSA.....	381	521	658	863	969	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA.....	387	465	580	723	826	Dakota

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

N E B R A S K A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4	BR
Adams.....	281	377	498	624	747	Antelope.....	270	365	444	571	645
Arthur.....	270	347	444	567	645	Banner.....	270	347	444	568	645
Blaine.....	270	347	444	567	645	Boone.....	270	347	444	567	671
Box Butte.....	292	347	444	568	670	Boyd.....	270	362	444	567	645
Brown.....	270	347	444	567	658	Buffalo.....	290	421	528	658	796
Burt.....	270	347	444	567	645	Butler.....	270	347	444	567	645
Cedar.....	270	347	444	567	645	Chase.....	270	366	444	567	677
Cherry.....	270	365	444	571	671	Cheyenne.....	302	347	444	567	645
Clay.....	270	347	444	567	645	Colfax.....	293	361	444	567	645
Cuming.....	270	366	444	567	645	Custer.....	302	349	444	567	670
Dawes.....	288	347	444	572	675	Dawson.....	295	361	444	572	645
Deuel.....	270	347	444	567	645	Dixon.....	301	347	444	567	645
Dodge.....	270	347	457	602	645	Dundy.....	270	347	444	567	645
Fillmore.....	270	347	444	567	645	Franklin.....	270	347	444	573	645
Frontier.....	303	347	444	567	645	Furnas.....	270	347	444	567	671
Gage.....	270	348	451	575	645	Garden.....	270	361	444	571	675
Garfield.....	270	347	444	567	645	Gosper.....	270	347	444	567	653
Grant.....	270	347	444	567	645	Greeley.....	270	347	444	567	656
Hall.....	322	426	568	747	838	Hamilton.....	270	347	444	572	645
Harlan.....	270	347	444	568	645	Hayes.....	270	364	444	567	671
Hitchcock.....	270	347	444	567	645	Holt.....	270	347	444	567	645
Hooker.....	270	364	444	568	645	Howard.....	270	347	444	567	645
Jefferson.....	270	347	444	567	645	Johnson.....	270	352	444	567	645
Kearney.....	270	347	444	567	675	Keith.....	270	347	444	567	645
Keya Paha.....	270	347	444	567	645	Kimball.....	270	347	444	568	675
Knox.....	270	360	444	567	645	Lincoln.....	277	361	444	567	645
Logan.....	270	347	444	567	676	Loup.....	270	347	444	567	673
McPherson.....	270	347	444	568	645	Madison.....	277	364	481	623	759
Merrick.....	270	347	444	567	645	Morrill.....	270	349	444	567	671
Nance.....	270	347	444	567	645	Nemaha.....	270	347	444	567	645
Nuckolls.....	270	347	444	567	645	Otoe.....	270	347	444	567	676
Pawnee.....	270	347	444	572	645	Perkins.....	270	347	444	567	645
Phelps.....	302	347	444	568	675	Pierce.....	270	347	444	567	645
Platte.....	270	347	444	619	645	Polk.....	270	347	444	567	645
Red Willow.....	270	347	444	567	656	Richardson.....	270	347	444	567	645
Rock.....	270	356	444	567	645	Saline.....	270	362	444	567	645
Saunders.....	270	347	444	567	645	Scotts Bluff.....	275	360	457	567	671
Seward.....	334	347	452	567	645	Sheridan.....	270	347	444	567	646
Sherman.....	270	349	444	567	676	Sioux.....	270	347	444	567	675
Stanton.....	270	347	444	567	645	Thayer.....	270	365	444	567	645

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PSS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	0 BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	0 BR 1	BR 2	BR 3	BR 4	BR
Thomas.....	270	347	444	567	645	Thurston.....	270	347	444	567	645
Valley.....	270	347	444	567	645	Wayne.....	308	347	444	567	671
Webster.....	270	347	444	567	645	Wheeler.....	270	347	444	568	645
York.....	270	347	449	567	645						

N E V A D A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

*Las Vegas, NV-AZ MSA.....	600	712	848	1181	1395	Clark, Nye
Reno, NV MSA.....	551	639	821	1144	1352	Washoe

NONMETROPOLITAN COUNTIES	0 BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	0 BR 1	BR 2	BR 3	BR 4	BR

Churchill.....	497	504	673	928	1103	Douglas.....	445	650	815	1132	1260
Elko.....	450	515	688	907	1130	Esmeralda.....	478	597	672	838	940
Eureka.....	366	597	672	837	937	Humboldt.....	538	564	681	892	954
Lander.....	369	573	672	840	1101	Lincoln.....	367	551	672	841	941
Lyon.....	437	523	672	936	1103	Mineral.....	371	508	677	886	1108
Pershing.....	509	515	688	860	983	Storey.....	515	522	688	956	1130
White Pine.....	367	505	672	907	953	Carson City.....	386	527	705	981	1158

N E W H A M P S H I R E

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Boston, MA-NH PMSA.....	808	910	1138	1423	1671	Rockingham county towns of Seabrook town
Lawrence, MA-NH PMSA.....	585	706	889	1110	1366	South Hampton town
Lowell, MA-NH PMSA.....	593	767	926	1160	1298	Rockingham county towns of Atkinson town, Chester town
Manchester, NH PMSA.....	477	681	850	1062	1191	Danville town, Derry town, Fremont town, Hampstead town
Nashua, NH PMSA.....	562	783	971	1322	1574	Kingston town, Newton town, Plaistow town, Raymond town
Portsmouth-Rochester, NH-ME PMSA.....	578	693	890	1143	1400	Salem town, Sandown town, Windham town
						Hillsborough county towns of Pelham town
						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
						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
						Rockingham county towns of Brentwood town
						East Kingston town, Epping town, Exeter town
						Greenland town, Hampton town, Hampton Falls town

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS

0 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

0 BR 1 BR 2 BR 3 BR 4 BR Towns within non metropolitan counties

Belknap.....	491	568	747	1010	1228	Andover town, Bennington town, Deering town
Carroll.....	410	564	751	941	1174	Francestown town, Greenfield town, Hancock town
Cheshire.....	510	605	774	1009	1197	Hillsborough town, Lyndeborough town, New Boston town
Coos.....	352	431	551	719	851	Peterborough town, Sharon town, Temple town
Grafton.....	453	547	729	941	1190	Windsor town
Hillsborough.....	483	603	803	1063	1280	Andover town, Boscawen town, Bow town, Bradford town
Merrimack.....	508	606	757	970	1083	Canterbury town, Chichester town, Concord city
Rockingham.....	527	617	826	1146	1322	Danbury town, Dunbarton town, Epsom town, Franklin city
Strafford.....	466	633	845	1059	1186	Henniker town, Hill town, Hopkinton town, Loudon town
Sullivan.....	490	498	647	850	906	Newbury town, New London town, Northfield town
						Pembroke town, Pittsfield town, Salisbury town
						Sutton town, Warner town, Webster town, Wilnot town
						Deerfield town, Northwood town, Nottingham town
						Middleton town, New Durham town, Strafford town

NEW JERSEY

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Atlantic-Cape May, NJ PMSA.....	572	652	866	1086	1240	Atlantic, Cape May
*Bergen-Passaic, NJ PMSA.....	796	970	1137	1515	1870	Bergen, Passaic
Jersey City, NJ PMSA.....	681	803	937	1190	1309	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA.....	793	868	1084	1472	1701	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA.....	697	835	1059	1408	1652	Monmouth, Ocean
*Newark, NJ PMSA.....	642	821	989	1246	1573	Essex, Morris, Sussex, Union, Warren
*Philadelphia, PA-NJ PMSA.....	599	735	909	1137	1426	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA.....	575	802	978	1324	1599	Merger
Vineland-Millville-Bridgeton, NJ PMSA.....	552	672	810	1010	1136	Cumberland

* 50th percentile areas are indicated by an * before the' MSA name.

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NEW MEXICO

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

*Albuquerque, NM MSA..... 475 565 708 976 1151 Bernalillo, Sandoval, Valencia
 Las Cruces, NM MSA..... 331 417 495 679 799 Dona Ana
 Santa Fe, NM MSA..... 479 680 839 1127 1276 Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Catron..... 308 360 447 601 679 Chaves..... 308 349 461 636 679
 Cibola..... 320 349 447 601 679 Colfax..... 308 358 447 601 679
 Curry..... 308 358 469 601 679 Debaca..... 308 349 447 601 679
 Eddy..... 316 348 447 601 698 Grant..... 365 417 533 715 806
 Guadalupe..... 308 348 447 601 683 Harding..... 308 348 447 601 679
 Hidalgo..... 308 348 447 601 679 Lea..... 308 348 447 601 679
 Lincoln..... 348 358 472 621 777 Luna..... 339 372 477 640 722
 McKinley..... 308 387 492 613 688 Mora..... 308 348 447 601 679
 Otero..... 308 348 447 624 679 Quay..... 308 446 502 629 704
 Rio Arriba..... 360 368 452 601 679 Roosevelt..... 308 348 447 601 679
 San Juan..... 347 372 465 645 766 San Miguel..... 341 348 460 601 679
 Sierra..... 308 348 447 601 679 Socorro..... 308 348 447 601 696
 Taos..... 529 536 715 893 1176 Torrance..... 338 365 447 601 679
 Union..... 308 375 447 601 679

NEW YORK

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Albany-Schenectady-Troy, NY MSA..... 444 547 672 844 942 Albany, Montgomery, Rensselaer, Saratoga, Schenectady
 Binghamton, NY MSA..... 398 447 558 708 795 Schoharie
 *Buffalo-Niagara Falls, NY PMSA..... 424 501 605 755 847 Broome, Tioga
 Dutchess County, NY PMSA..... 675 855 1058 1374 1606 Erie, Niagara
 Elmira, NY MSA..... 398 447 549 694 828 Dutchess
 Glens Falls, NY MSA..... 398 518 632 792 885 Chemung
 Jamestown, NY MSA..... 398 447 538 694 795 Warren, Washington
 Nassau-Suffolk, NY PMSA..... 906 1092 1332 1854 1986 Chautauqua
 New York, NY PMSA..... 850 946 1075 1345 1507 Nassau, Suffolk
 Westchester County, NY..... 815 1063 1295 1683 2009 Bronx, Kings, New York, Putnam, Queens, Richmond
 Newburgh, NY-PA PMSA..... 540 701 859 1090 1242 Rockland
 Rochester, NY MSA..... 429 558 678 870 950 Westchester
 Syracuse, NY MSA..... 426 513 637 813 901 Orange
 Utica-Rome, NY MSA..... 397 446 536 693 792 Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
 Cayuga, Madison, Onondaga, Oswego
 Herkimer, Oneida

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany.....	398	447	537	694	794	Cattaraugus.....	398	447	537	694	794
Chenango.....	423	447	537	694	794	Clinton.....	398	447	578	722	810
Columbia.....	497	523	670	877	939	Cortland.....	398	475	594	743	880
Delaware.....	398	447	537	694	853	Essex.....	398	452	568	711	794
Franklin.....	398	447	537	694	794	Fulton.....	398	447	537	694	794
Greene.....	398	515	618	798	975	Hamilton.....	398	478	550	694	794
Jefferson.....	427	504	593	743	832	Lewis.....	398	447	537	694	794
Otsego.....	398	470	541	698	888	St. Lawrence.....	398	447	537	694	794
Schuyler.....	431	458	545	758	893	Seneca.....	424	456	551	712	794
Steuben.....	411	468	537	703	794	Sullivan.....	515	578	705	975	988
Tompkins.....	520	559	718	1002	1181	Ulster.....	488	679	816	1063	1339
Wyoming.....	398	447	537	694	794	Yates.....	398	447	537	694	794

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE	0 BR	1 BR	2 BR	3 BR	4 BR
Asheville, NC MSA.....	388	470	613	799	861	Buncombe, Madison	388	470	613	799	861
Charlotte-Gastonia-Rock Hill, NC-SC MSA.....	578	652	734	968	1159	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union	578	652	734	968	1159
Fayetteville, NC MSA.....	425	484	542	751	892	Cumberland	425	484	542	751	892
Goldboro, NC MSA.....	386	446	540	696	813	Wayne	386	446	540	696	813
Greensboro--Winston-Salem--High Point, NC MSA.....	461	526	626	863	878	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph	461	526	626	863	878
Greenville, NC MSA.....	477	485	628	848	1036	Stokes, Yadkin	477	485	628	848	1036
Hickory-Morganton, NC MSA.....	439	478	555	702	832	Pitt	439	478	555	702	832
Jacksonville, NC MSA.....	397	463	525	728	860	Alexander, Burke, Caldwell, Catawba	397	463	525	728	860
*Norfolk-Virginia Beach-Newport News, VA-NC MSA.....	530	598	706	987	1159	Onslow	530	598	706	987	1159
Raleigh-Durham-Chapel Hill, NC MSA.....	590	717	841	1129	1332	Currituck	590	717	841	1129	1332
Rocky Mount, NC MSA.....	372	401	488	647	715	Chatham, Durham, Franklin, Johnston, Orange, Wake	372	401	488	647	715
Wilmington, NC MSA.....	510	560	685	938	1119	Edgecombe, Nash	510	560	685	938	1119
						Brunswick, New Hanover					

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany.....	328	383	459	591	701	Anson.....	328	378	459	591	671
Ashe.....	328	378	459	591	671	Avery.....	366	412	501	629	703
Beaufort.....	328	378	459	591	671	Bertie.....	328	378	459	591	671
Bladen.....	328	378	459	591	671	Camden.....	328	419	558	697	783
Carteret.....	371	407	496	689	767	Caswell.....	328	378	459	591	671
Cherokee.....	328	378	459	591	671	Chowan.....	328	378	459	591	671
Clay.....	328	378	459	591	671	Cleveland.....	414	486	580	769	849
Columbus.....	328	378	459	591	671	Craven.....	328	410	494	645	691
Dare.....	340	539	620	851	871	Duplin.....	328	378	459	591	671
Gates.....	328	378	459	591	671	Graham.....	328	378	459	591	671

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES		0 BR 1	BR 2	BR 3	BR 4	BR
Granville.....	345	378	459	607	688	
Halifax.....	328	378	459	591	671	
Haywood.....	341	387	472	634	690	
Hertford.....	328	378	459	591	671	
Hyde.....	328	378	459	591	671	
Jackson.....	400	461	561	785	1026	
Lee.....	328	419	496	642	695	
Mcdowell.....	328	399	478	654	775	
Martin.....	328	378	459	591	671	
Montgomery.....	328	378	459	591	671	
Northampton.....	328	378	459	591	671	
Pasquotank.....	378	405	503	701	707	
Perquimans.....	328	378	459	591	671	
Polk.....	422	536	600	761	865	
Robeson.....	328	385	459	591	671	
Rutherford.....	403	460	559	720	818	
Scotland.....	328	378	459	591	671	
Surry.....	328	378	459	591	671	
Transylvania.....	379	406	513	680	727	
Vance.....	346	392	459	591	671	
Washington.....	328	378	459	591	671	
Wilkes.....	372	420	472	653	733	
Yancey.....	328	384	459	591	692	

N O R T H D A K O T A

METROPOLITAN FMR AREAS

COUNTIES OF FMR AREA WITHIN STATE		0 BR 1	BR 2	BR 3	BR 4	BR
Bismarck, ND MSA.....	391	438	584	813	962	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA.....	384	528	639	887	950	Cass
Grand Forks, ND-MN MSA.....	397	473	623	859	958	Grand Forks

NONMETROPOLITAN COUNTIES		0 BR 1	BR 2	BR 3	BR 4	BR
Adams.....	258	325	419	545	636	
Benson.....	293	325	419	545	636	
Bottineau.....	258	325	419	545	636	
Burke.....	281	325	419	545	636	
Dickey.....	281	325	419	545	636	
Dunn.....	258	325	419	545	636	
Emmons.....	258	325	419	545	636	
Golden Valley.....	258	333	442	553	636	

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
Griggs.....					Hettinger.....				
258	325	419	545	636	258	325	419	545	636
Kidder.....					Lamoure.....				
258	325	419	545	636	281	325	419	545	636
Logan.....					McHenry.....				
258	325	419	545	636	258	325	419	545	636
McIntosh.....					Mckenzie.....				
258	325	419	545	636	258	325	419	545	636
McLean.....					Mercer.....				
274	325	419	545	636	258	325	419	545	636
Mountrail.....					Nelson.....				
286	325	419	545	636	258	325	419	545	636
Oliver.....					Pembina.....				
258	325	419	545	636	258	325	419	552	656
Pierce.....					Ramsey.....				
258	325	419	561	636	266	356	474	594	776
Ransom.....					Renville.....				
264	325	419	545	636	299	325	419	548	647
Richland.....					Rolette.....				
271	325	426	545	636	279	357	430	545	636
Sargent.....					Sheridan.....				
258	325	419	545	636	258	325	419	545	636
Sioux.....					Slope.....				
258	325	419	545	636	258	325	419	545	636
Stark.....					Steele.....				
258	325	419	545	636	258	325	419	545	636
Stutsman.....					Towner.....				
308	325	423	590	695	295	333	442	553	729
Trail.....					Walsh.....				
271	346	419	545	636	344	368	457	572	640
Ward.....					Wells.....				
258	356	474	641	764	275	325	419	545	636
Williams.....									
258	325	419	545	636					
O H I O									
METROPOLITAN FMR AREAS					Counties of FMR AREA within STATE				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
Akron, OH PMSA.....					Portage, Summit				
444	538	691	864	969	444	538	691	864	969
Brown County, OH.....					Brown				
338	397	496	642	708	338	397	496	642	708
Canton-Massillon, OH MSA.....					Carroll, Stark				
327	425	542	679	762	327	425	542	679	762
Cincinnati, OH-KY-IN.....					Clermont, Hamilton, Warren				
362	465	624	836	903	362	465	624	836	903
*Cleveland-Lorain-Elyria, OH PMSA.....					Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina				
505	636	786	1001	1126	505	636	786	1001	1126
Columbus, OH MSA.....					Delaware, Fairfield, Franklin, Licking, Madison, Pickaway				
446	527	678	860	989	446	527	678	860	989
Dayton-Springfield, OH MSA.....					Clark, Greene, Miami, Montgomery				
435	488	623	805	903	435	488	623	805	903
Hamilton-Middletown, OH PMSA.....					Butler				
365	520	666	833	932	365	520	666	833	932
Huntington-Ashland, WV-KY-OH MSA.....					Lawrence				
343	403	496	632	697	343	403	496	632	697
Lima, OH MSA.....					Allen, Auglaize				
327	392	515	657	720	327	392	515	657	720
Mansfield, OH MSA.....					Crawford, Richland				
327	392	498	621	696	327	392	498	621	696
Parkersburg-Marietta, WV-OH MSA.....					Washington				
345	414	474	615	667	345	414	474	615	667
Steubenville-Weirton, OH-WV MSA.....					Jefferson				
327	385	483	615	686	327	385	483	615	686
Toledo, OH MSA.....					Fulton, Lucas, Wood				
408	497	607	782	849	408	497	607	782	849
Wheeling, WV-OH MSA.....					Belmont				
356	391	483	615	686	356	391	483	615	686
Youngstown-Warren, OH MSA.....					Columbiana, Mahoning, Trumbull				
383	451	565	710	809	383	451	565	710	809

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

O H I O continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
Adams.....	317	377	470	599	671	Ashland.....	317	377	496
Athens.....	439	496	582	763	937	Champaign.....	317	387	503
Clinton.....	362	465	559	779	785	Coshocton.....	317	377	470
Darke.....	348	377	473	599	671	Defiance.....	377	429	565
Erie.....	317	423	528	712	865	Fayette.....	344	377	470
Gallia.....	317	377	470	599	671	Guernsey.....	317	377	470
Hancock.....	403	408	515	658	721	Hardin.....	317	377	470
Harrison.....	317	377	470	599	671	Henry.....	366	405	505
Highland.....	317	377	470	599	671	Hocking.....	317	377	470
Holmes.....	317	377	470	599	671	Huron.....	368	400	499
Jackson.....	317	377	470	599	671	Knox.....	373	411	527
Logan.....	372	378	487	656	683	Marion.....	317	377	470
Meigs.....	317	377	470	599	671	Mercer.....	317	377	470
Monroe.....	317	377	470	599	671	Morgan.....	317	383	470
Morrow.....	317	377	470	599	671	Muskingum.....	317	377	470
Noble.....	317	377	470	599	680	Ottawa.....	317	470	539
Paulding.....	317	377	470	599	671	Perry.....	317	377	470
Pike.....	333	397	494	631	705	Preble.....	326	386	481
Putnam.....	329	377	470	599	671	Ross.....	368	384	470
Sandusky.....	317	412	528	667	736	Scioto.....	317	377	470
Seneca.....	318	377	470	603	671	Shelby.....	317	387	516
Tuscarawas.....	317	377	492	616	691	Union.....	317	439	580
Van Wert.....	317	382	470	599	671	Vinton.....	317	377	470
Wayne.....	317	420	516	656	723	Williams.....	353	394	490
Wyandot.....	317	377	470	599	671				

O K L A H O M A

METROPOLITAN FMR AREAS

Counties of FMR AREA within STATE

0	BR 1	BR 2	BR 3	BR 4	BR
Enid, OK MSA.....	335	340	451	628	719
Fort Smith, AR-OK MSA.....	378	382	502	672	706
Lawton, OK MSA.....	416	418	531	738	809
*Oklahoma City, OK MSA.....	434	472	613	851	952
					Pottawatomie
*Tulsa, OK MSA.....	400	478	626	872	1028
					Creek, Osage, Rogers, Tulsa, Wagoner

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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O K L A H O M A continued

NONMETROPOLITAN COUNTIES				0 BR 1 BR 2 BR 3 BR 4 BR				NONMETROPOLITAN COUNTIES				0 BR 1 BR 2 BR 3 BR 4 BR			
Adair.....	281	322	403	536	614			Alfalfa.....	281	322	403	536	614		
Atoka.....	281	322	403	536	614			Beaver.....	281	327	403	536	614		
Beckham.....	286	322	403	536	614			Blaine.....	281	322	403	536	614		
Bryan.....	281	322	403	536	614			Caddo.....	281	322	403	536	614		
Carter.....	281	325	406	565	614			Cherokee.....	294	333	403	536	624		
Choctaw.....	281	322	403	536	614			Cimarron.....	281	322	403	536	614		
Coal.....	281	322	403	536	614			Cotton.....	281	322	403	536	614		
Craig.....	281	322	403	550	651			Custer.....	281	322	413	575	663		
Delaware.....	281	322	403	536	626			Dewey.....	281	322	403	536	614		
Ellis.....	281	322	403	536	614			Garvin.....	281	322	403	536	618		
Grady.....	308	322	418	567	685			Grant.....	281	322	403	536	614		
Greer.....	281	322	403	536	614			Harmon.....	281	322	403	536	614		
Harper.....	281	322	403	536	614			Haskell.....	281	322	403	536	614		
Hughes.....	281	322	403	536	614			Jackson.....	281	365	445	585	659		
Jefferson.....	281	322	403	536	614			Johnston.....	281	322	403	536	614		
Kay.....	312	329	433	604	708			Kingfisher.....	281	332	412	539	614		
Kiowa.....	281	322	403	536	614			Latimer.....	281	322	403	536	614		
Le Flore.....	281	322	403	536	614			Lincoln.....	301	322	403	536	614		
Love.....	281	322	407	536	614			McCurtain.....	281	322	403	536	614		
McIntosh.....	281	322	403	536	614			Major.....	281	338	403	559	614		
Marshall.....	281	322	403	536	614			Mayes.....	281	327	435	550	614		
Murray.....	281	322	403	536	614			Muskogee.....	305	342	403	556	614		
Noble.....	281	322	403	536	614			Nowata.....	281	322	403	536	614		
Okfuskee.....	281	322	403	536	614			Oklmulgee.....	286	322	403	536	614		
Ottawa.....	302	322	403	536	614			Pawnee.....	317	322	418	537	614		
Payne.....	374	443	566	783	877			Pittsburg.....	281	322	403	536	614		
Pontotoc.....	281	322	403	536	614			Pushmataha.....	281	322	403	536	614		
Roger Mills.....	281	322	403	536	614			Seminole.....	281	322	403	536	614		
Stephens.....	286	322	403	536	639			Texas.....	281	334	403	537	614		
Tillman.....	281	322	403	536	614			Washington.....	281	386	470	624	728		
Washita.....	281	322	403	536	614			Woods.....	281	322	403	536	614		
Woodward.....	281	322	403	536	614										

O R E G O N

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Corvallis, OR MSA.....	434	563	715	1074	1140	Benton
Eugene-Springfield, OR MSA.....	375	515	671	938	1083	Lane
Medford-Ashland, OR MSA.....	385	505	676	940	1047	Jackson

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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O R E G O N continued

METROPOLITAN FMR AREAS

	0	BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Portland-Vancouver, OR-WA PMSA.....	533	656	809	1124	1221		Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA.....	451	533	682	939	983		Marion, Polk

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Baker.....	349	413	537	740	824		Clatsop.....	403	477	625	852	958
Coos.....	349	426	566	788	824		Crook.....	349	413	537	740	824
Curry.....	349	475	630	808	993		Deschutes.....	432	496	664	925	1070
Douglas.....	349	413	537	740	880		Gilliam.....	349	440	537	740	824
Grant.....	349	413	537	740	824		Harney.....	349	413	537	740	824
Hood River.....	410	461	627	816	966		Jefferson.....	349	413	537	740	824
Josephine.....	349	424	546	740	861		Klamath.....	349	413	537	740	875
Lake.....	349	413	537	740	824		Lincoln.....	424	431	574	798	868
Linn.....	419	498	646	889	991		Malheur.....	349	413	537	740	824
Morrow.....	349	413	537	740	824		Sherman.....	349	413	537	740	824
Tillamook.....	349	413	537	740	824		Umatilla.....	349	413	537	740	824
Union.....	349	413	537	740	824		Walla Walla.....	349	413	537	740	824
Wasco.....	425	527	589	802	902		Wheeler.....	349	413	537	740	824

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Allentown-Bethlehem-Easton, PA MSA.....	421	572	680	886	994		Carbon, Lehigh, Northampton
Altoona, PA MSA.....	321	408	489	639	715		Blair
Erie, PA MSA.....	326	425	501	647	723		Erie
Harrisburg-Lebanon-Carlisle, PA MSA.....	386	495	634	800	892		Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA.....	326	414	498	647	723		Cambria, Somerset
Lancaster, PA MSA.....	429	525	655	855	920		Lancaster
Newburgh, NY-PA PMSA.....	540	701	859	1090	1242		Pike
*Philadelphia, PA-NJ PMSA.....	599	735	909	1137	1426		Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA.....	431	527	637	797	890		Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA.....	339	501	618	772	871		Berks
Scranton-Wilkes-Barre-Hazleton, PA MSA.....	326	456	547	682	824		Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA.....	357	414	498	647	723		Mercer
State College, PA MSA.....	469	574	710	930	995		Centre
Williamsport, PA MSA.....	326	417	501	647	723		Lycoming
York, PA MSA.....	364	498	618	771	863		York

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

P E N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
Adams.....	320	432	573	743	940	Armstrong.....	325	431	488
Bedford.....	320	408	488	638	712	Bradford.....	325	412	502
Cameron.....	320	408	488	638	712	Clarion.....	320	408	488
Clearfield.....	320	408	488	638	712	Clinton.....	320	408	488
Crawford.....	320	408	488	638	712	Elk.....	320	408	488
Forest.....	320	408	488	638	712	Franklin.....	320	408	495
Fulton.....	320	408	488	638	712	Greene.....	320	408	488
Huntingdon.....	320	408	488	638	712	Indiana.....	368	410	488
Jefferson.....	320	408	488	638	712	Juniata.....	320	408	488
Lawrence.....	320	408	488	638	712	Mc Kean.....	320	410	488
Mifflin.....	356	408	488	638	712	Monroe.....	513	612	756
Montour.....	379	408	513	712	841	Northumberland.....	339	429	523
Potter.....	320	408	488	638	712	Schuylkill.....	320	408	509
Snyder.....	385	408	489	638	712	Sullivan.....	320	408	488
Susquehanna.....	383	408	488	638	757	Tioga.....	320	408	488
Union.....	386	514	642	803	898	Venango.....	320	408	488
Warren.....	320	408	488	638	712	Wayne.....	321	497	586

R H O D E I S L A N D

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS					Components of FMR AREA within STATE				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
New London-Norwich, CT-RI MSA.....	561	679	827	1034	1183	Washington county towns of Hopkinton town, Westerly town			
Providence-Fall River-Warwick, RI-MA MSA.....	430	586	704	884	1090	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, Gloucester 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 areas are indicated by an * before the' MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES

	0 BR 1	BR 2	BR 3	BR 4	BR	Towns within non metropolitan counties
Newport.....	637	742	953	1194	1334	Middletown town, Newport city, Portsmouth town
Washington.....	753	847	952	1228	1353	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS

	0 BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE

Augusta-Aiken, GA-SC MSA.....	433	517	611	829	981	Aiken, Edgefield
Charleston-North Charleston, SC MSA.....	457	530	608	809	943	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA.....	578	652	734	968	1159	York
Columbia, SC MSA.....	489	539	619	819	943	Lexington, Richland
Florence, SC MSA.....	371	412	536	668	750	Florence
Greenville-Spartanburg-Anderson, SC MSA.....	439	533	601	757	890	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA.....	479	488	625	782	876	Horry
Sumter, SC MSA.....	392	434	492	675	801	Sumter

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Abbeville.....	322	375	457	587	671	Allendale.....	322	375	457	587	671
Bamberg.....	322	375	457	587	671	Barnwell.....	339	375	459	587	671
Beaufort.....	460	564	650	811	909	Calhoun.....	322	375	457	587	671
Chester.....	322	375	457	587	671	Chesterfield.....	322	375	457	587	671
Clarendon.....	322	375	457	587	671	Colleton.....	322	375	457	587	671
Darlington.....	322	375	457	587	671	Dillon.....	322	375	457	587	671
Fairfield.....	322	432	492	613	688	Georgetown.....	322	410	460	587	698
Greenwood.....	323	375	457	587	671	Hampton.....	322	375	457	587	671
Jasper.....	322	375	457	587	671	Kershaw.....	322	375	457	587	671
Lancaster.....	338	377	457	587	671	Laurens.....	322	375	457	587	671
Lee.....	322	375	457	587	671	McCormick.....	322	375	457	587	715
Marion.....	322	375	457	587	671	Marlboro.....	322	375	457	587	671
Newberry.....	322	375	457	587	671	Oconee.....	322	375	457	587	671
Orangeburg.....	322	375	457	587	671	Saluda.....	322	375	457	587	671
Union.....	322	375	457	587	671	Williamsburg.....	322	375	457	587	671

S O U T H D A K O T A

METROPOLITAN FMR AREAS

	0 BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE

Rapid City, SD MSA.....	405	482	642	873	1057	Pennington
Sioux Falls, SD MSA.....	391	541	686	868	997	Lincoln, Minnehaha

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4		
Aurora.....	287	384	478	632	732	Beadle.....	287	381	478	632	732
Bennett.....	287	381	478	632	732	Bon Homme.....	318	381	478	632	732
Brookings.....	306	487	539	730	861	Brown.....	316	419	526	696	806
Brule.....	287	381	478	632	732	Buffalo.....	287	381	478	632	732
Butte.....	331	451	600	784	924	Campbell.....	287	381	478	632	732
Charles Mix.....	287	381	478	632	732	Clark.....	287	381	478	632	732
Clay.....	319	423	531	704	874	Codington.....	330	437	551	729	844
Corson.....	287	381	478	632	732	Custer.....	287	381	478	632	732
Davison.....	320	405	509	682	781	Day.....	320	381	478	632	732
Deuel.....	287	381	478	632	732	Dewey.....	287	381	478	632	732
Douglas.....	318	381	478	632	732	Edmunds.....	287	381	478	632	732
Fall River.....	327	381	478	632	732	Faulk.....	287	381	503	632	732
Grant.....	287	381	478	632	732	Gregory.....	288	381	478	632	732
Haakon.....	287	390	478	632	732	Hamlin.....	287	381	478	632	732
Hand.....	287	381	478	632	732	Hanson.....	291	398	530	667	747
Harding.....	287	390	478	632	732	Hughes.....	326	394	522	686	813
Hutchinson.....	287	381	478	632	732	Hyde.....	287	387	478	632	732
Jackson.....	287	386	478	632	732	Jerauld.....	287	384	478	632	732
Jones.....	287	381	478	632	732	Kingsbury.....	312	381	478	632	732
Lake.....	287	386	478	632	732	Lawrence.....	329	473	595	815	923
Lyman.....	287	381	478	632	732	McCook.....	287	381	478	632	732
Mcpherson.....	287	381	478	632	732	Marshall.....	339	381	478	632	732
Meade.....	403	455	606	794	937	Mellette.....	342	386	478	632	732
Miner.....	287	386	478	632	732	Moody.....	287	381	478	632	732
Perkins.....	287	381	478	632	732	Potter.....	287	381	478	632	732
Roberts.....	287	381	478	632	732	Sanborn.....	287	381	478	632	732
Shannon.....	287	386	478	632	732	Spink.....	310	381	486	632	732
Stanley.....	287	390	478	632	732	Sully.....	287	381	478	632	732
Todd.....	316	381	478	632	732	Tripp.....	287	381	478	632	732
Turner.....	287	381	478	632	732	Union.....	301	381	478	632	732
Walworth.....	287	390	478	632	732	Yankton.....	287	381	478	632	732
Ziebach.....	287	381	478	632	732						

T E N N E S S E E

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Chattanooga, TN-GA MSA.....	414	484	581	751	855	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA.....	384	430	505	689	708	Montgomery
Jackson, TN MSA.....	297	393	527	729	733	Madison, Chester

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

T E N E S S E continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Johnson City-Kingsport-Bristol, TN-VA MSA..... 345 412 510 662 784 Carter, Hawkins, Sullivan, Unicoi, Washington
 Knoxville, TN MSA..... 345 424 534 712 854 Anderson, Blount, Knox, Loudon, Sevier, Union
 Memphis, TN-AR-MS MSA..... 440 514 604 839 881 Fayette, Shelby, Tipton
 Nashville, TN MSA..... 484 579 715 972 1091 Cheatham, Davidson, Dickson, Robertson, Rutherford
 Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0 BR	1 BR	2 BR	3 BR	4 BR	0 BR	1 BR	2 BR	3 BR	4 BR		
Bedford.....	266	343	420	528	588	Benton.....	288	328	394	520	582
Bledsoe.....	266	313	394	520	582	Bradley.....	266	336	449	607	738
Campbell.....	268	313	394	520	582	Cannon.....	266	313	394	520	582
Carroll.....	266	325	394	520	582	Claborn.....	266	313	394	520	582
Clay.....	270	313	394	520	582	Cocke.....	266	313	394	520	582
Coffee.....	266	372	419	582	664	Crockett.....	266	313	394	520	582
Cumberland.....	281	313	410	571	582	Decatur.....	266	313	394	520	582
Dekalb.....	266	313	394	520	582	Dyer.....	333	338	450	563	703
Fentress.....	266	313	394	520	582	Franklin.....	279	313	394	543	639
Gibson.....	266	313	394	520	582	Giles.....	266	340	421	526	589
Grainger.....	270	313	394	520	582	Greene.....	266	313	394	520	582
Grundey.....	266	313	394	520	582	Hamblen.....	266	314	412	548	582
Hancock.....	266	313	394	520	582	Hardeman.....	266	313	394	520	582
Hardin.....	266	313	394	520	582	Haywood.....	280	326	434	543	607
Henderson.....	266	313	394	520	582	Henry.....	266	313	394	520	582
Hickman.....	315	320	424	559	593	Houston.....	266	313	394	520	582
Humphreys.....	266	326	394	520	582	Jackson.....	266	313	394	520	582
Jefferson.....	291	313	406	520	644	Johnson.....	266	313	394	520	582
Lake.....	266	313	394	520	582	Lauderdale.....	266	313	398	520	582
Lawrence.....	266	313	394	520	582	Lewis.....	266	313	394	520	582
Lincoln.....	266	313	399	520	582	Mcminn.....	266	313	394	522	582
McNairy.....	266	313	394	520	582	Macon.....	266	313	394	520	582
Marshall.....	314	342	446	563	627	Mauzy.....	382	390	520	651	725
Meigs.....	266	313	394	520	582	Monroe.....	266	313	394	520	582
Moore.....	266	313	394	520	582	Morgan.....	266	313	394	520	582
Obion.....	309	314	401	533	582	Overton.....	266	313	394	520	582
Perry.....	266	315	394	520	582	Pickett.....	266	313	394	520	582
Polk.....	266	313	394	520	582	Putnam.....	325	328	421	579	623
Rhea.....	266	333	394	525	582	Roane.....	288	313	394	531	639
Scott.....	266	313	394	520	582	Sequatchie.....	266	313	394	520	582
Smith.....	266	313	394	520	582	Stewart.....	266	313	394	520	582
Trousdale.....	266	328	435	547	716	Van Buren.....	266	313	394	520	582
Warren.....	296	313	405	520	582	Wayne.....	266	313	394	520	582

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

T E N E S E E continued

NONMETROPOLITAN COUNTIES				NONMETROPOLITAN COUNTIES			
0 BR 1	BR 2	BR 3	BR 4 BR	0 BR 1	BR 2	BR 3	BR 4 BR
Weakley.....	289	313	394 520 582	White.....	270	313	394 520 582
T E X A S							
METROPOLITAN FMR AREAS				Counties of FMR AREA within STATE			
0 BR 1	BR 2	BR 3	BR 4 BR	0 BR 1	BR 2	BR 3	BR 4 BR
Abilene, TX MSA.....	379	421	543 732 890	Taylor			
Amarillo, TX MSA.....	320	404	502 701 826	Potter, Randall			
*Austin-San Marcos, TX MSA.....	597	722	961 1335 1578	Pastrop, Caldwell, Hays, Travis, Williamson			
Beaumont-Port Arthur, TX MSA.....	365	442	537 712 754	Hardin, Jefferson, Orange			
Brazoria, TX PMSA.....	531	592	740 1031 1213	Brazoria			
Brownsville-Harlingen-San Benito, TX MSA.....	335	423	528 662 826	Cameron			
Bryan-College Station, TX MSA.....	426	496	627 875 1032	Brazos			
Corpus Christi, TX MSA.....	399	490	626 852 1008	Nueces, San Patricio			
*Dallas, TX.....	574	660	848 1173 1387	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall			
El Paso, TX MSA.....	450	504	598 827 982	El Paso			
*Fort Worth-Arlington, TX PMSA.....	543	591	766 1070 1261	Hood, Johnson, Parker, Tarrant			
Galveston-Texas City, TX PMSA.....	522	536	671 932 1101	Galveston			
Henderson County, TX.....	331	394	482 656 788	Henderson			
*Houston, TX PMSA.....	527	593	768 1070 1262	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller			
Killeen-Temple, TX MSA.....	449	468	592 823 905	Bell, Coryell			
Laredo, TX MSA.....	364	419	550 688 774	Webb			
Longview-Marshall, TX MSA.....	360	406	498 680 742	Gregg, Harrison, Upshur			
Lubbock, TX MSA.....	345	436	566 788 874	Lubbock			
Mc Allen-Edinburg-Mission, TX MSA.....	312	414	475 592 665	Hidalgo			
Odessa-Midland, TX MSA.....	345	398	531 740 857	Ector, Midland			
San Angelo, TX MSA.....	320	409	496 681 803	Tom Green			
*San Antonio, TX MSA.....	447	516	667 928 1098	Bexar, Comal, Guadalupe, Wilson			
Sherman-Denison, TX MSA.....	320	437	528 676 808	Grayson			
Texarkana, TX-Texarkana, AR MSA.....	348	425	520 685 727	Bowie			
Tyler, TX MSA.....	400	443	540 748 792	Smith			
Victoria, TX MSA.....	396	400	507 703 792	Victoria			
Waco, TX MSA.....	348	426	562 747 787	McLennan			
Wichita Falls, TX MSA.....	384	429	517 689 812	Archer, Wichita			

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

T E X A S continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4		
Anderson.....	375	423	474	660	667	Andrews.....	313	361	435	585	667
Angelina.....	341	396	446	618	730	Aransas.....	313	385	512	714	718
Armstrong.....	313	361	472	592	667	Atascosa.....	313	361	435	585	667
Austin.....	313	361	435	598	667	Bailey.....	313	361	435	585	667
Bandera.....	335	361	435	592	667	Baylor.....	313	361	435	585	667
Bee.....	313	361	435	585	667	Blanco.....	313	361	460	642	678
Borden.....	313	361	435	585	667	Bosque.....	313	361	435	585	667
Brewster.....	313	361	435	589	706	Briscoe.....	313	361	435	585	667
Brooks.....	313	361	435	585	667	Brown.....	313	361	436	587	717
Burleson.....	313	361	457	618	754	Burnet.....	397	459	565	786	919
Calhoun.....	334	361	435	603	714	Callahan.....	313	361	435	585	667
Camp.....	423	429	536	670	749	Carson.....	313	361	435	585	667
Cass.....	313	361	435	585	667	Castro.....	315	361	435	585	667
Cherokee.....	348	362	444	585	667	Childress.....	313	361	435	585	667
Clay.....	313	368	435	585	681	Cochran.....	313	361	435	585	667
Coke.....	313	361	435	585	667	Coleman.....	313	361	435	585	667
Collingsworth.....	313	361	435	585	667	Colorado.....	313	361	435	585	667
Comanche.....	313	361	435	585	667	Concho.....	313	361	435	585	667
Cooke.....	339	361	458	624	692	Cottle.....	313	361	435	585	667
Crane.....	313	361	435	585	667	Crockett.....	313	361	435	585	667
Crosby.....	313	361	435	585	667	Culberson.....	313	361	435	585	667
Dallam.....	313	361	435	585	667	Dawson.....	313	361	435	585	667
Deaf Smith.....	313	361	435	585	679	Delta.....	313	374	435	585	667
Dewitt.....	313	361	435	585	667	Dickens.....	313	361	435	585	667
Dimmit.....	313	361	435	585	667	Donley.....	313	361	435	585	667
Duval.....	313	361	435	585	667	Eastland.....	313	361	435	585	667
Edwards.....	313	361	435	585	667	Erath.....	323	367	474	614	667
Falls.....	313	361	435	585	667	Fannin.....	317	361	435	587	667
Fayette.....	313	361	435	585	667	Fisher.....	313	361	435	585	667
Floyd.....	313	361	435	585	667	Foard.....	313	361	435	585	667
Franklin.....	313	361	435	603	667	Freestone.....	313	361	435	585	667
Frio.....	313	361	435	585	667	Gaines.....	319	361	435	585	667
Garza.....	313	361	435	585	667	Gillespie.....	313	394	510	702	716
Glasscock.....	313	361	435	585	667	Goliad.....	313	361	435	585	667
Gonzales.....	313	361	435	585	667	Gray.....	342	361	464	585	690
Grimes.....	313	361	435	589	695	Hale.....	313	361	435	585	667
Hall.....	313	361	435	585	667	Hamilton.....	313	361	435	585	667
Hansford.....	313	361	435	585	685	Hardeman.....	313	361	435	585	667
Hartley.....	313	361	435	585	667	Haskell.....	313	361	435	585	667
Hemphill.....	313	403	450	629	667	Hill.....	313	361	435	585	667

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

T E X A S continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hockley.....	319	372	435	590	667	Hopkins.....	365	393	460	642	692
Houston.....	313	361	435	585	667	Howard.....	333	361	435	589	667
Hudspeth.....	377	425	474	595	783	Hutchinson.....	313	361	450	629	743
Irion.....	313	361	435	585	667	Jack.....	313	361	435	585	667
Jackson.....	313	362	435	585	667	Jasper.....	313	361	445	592	727
Jeff Davis.....	313	361	435	585	667	Jim Hogg.....	313	361	435	585	667
Jim Wells.....	313	361	435	585	677	Jones.....	313	361	435	585	667
Karnes.....	313	361	435	585	667	Kendall.....	313	456	512	714	844
Kenedy.....	313	361	435	585	667	Kent.....	313	361	435	585	667
Kerr.....	313	405	505	705	831	Kimble.....	313	361	474	594	667
King.....	313	361	435	585	667	Kinney.....	313	361	435	585	667
Kleberg.....	380	394	479	670	789	Knox.....	313	361	435	585	667
Lamar.....	313	388	456	638	754	Lamb.....	313	361	435	585	667
Lampasas.....	313	361	435	592	699	La Salle.....	313	361	435	585	667
Lavaca.....	313	361	435	585	667	Lee.....	354	398	447	625	701
Leon.....	313	401	449	585	741	Limestone.....	313	361	435	585	667
Lipscomb.....	313	361	435	585	667	Live Oak.....	313	361	435	585	667
Llano.....	313	403	536	671	880	Loving.....	313	361	435	585	667
Lynn.....	313	361	435	585	667	Mcculloch.....	321	361	435	585	667
McMullen.....	313	361	435	585	667	Madison.....	313	371	435	585	688
Marion.....	313	361	435	585	692	Martin.....	313	361	435	585	667
Mason.....	313	361	435	585	667	Matagorda.....	361	395	489	680	685
Maverick.....	313	361	435	585	667	Medina.....	313	361	435	585	667
Menard.....	313	361	435	585	667	Milam.....	313	361	435	585	667
Mills.....	313	361	435	585	667	Mitchell.....	313	361	435	585	667
Montague.....	313	361	435	585	667	Moore.....	313	367	435	585	679
Morris.....	313	361	435	585	667	Motley.....	313	361	435	585	667
Nacogdoches.....	329	398	515	644	762	Navarro.....	374	394	473	601	667
Newton.....	313	361	435	585	667	Nolan.....	321	361	435	585	667
Ochiltree.....	313	361	435	585	667	Oldham.....	313	361	472	592	693
Palo Pinto.....	313	361	435	585	694	Panola.....	313	368	435	585	667
Parmer.....	313	361	435	585	667	Pecos.....	313	361	435	589	695
Polk.....	348	381	444	598	724	Presidio.....	313	361	435	585	667
Rains.....	313	405	489	680	685	Reagan.....	398	405	538	677	884
Real.....	313	361	435	585	667	Red River.....	313	403	450	585	667
Reeves.....	313	361	435	585	667	Refugio.....	313	361	435	585	667
Roberts.....	313	365	435	585	667	Robertson.....	313	414	461	585	667
Runnels.....	313	361	435	585	667	Rusk.....	326	361	435	585	667
Sabine.....	313	361	435	585	667	San Augustine.....	313	361	435	585	667
San Jacinto.....	327	369	435	585	683	San Saba.....	313	361	435	585	667

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

T E X A S continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
Schleicher.....	313	361	435	585	667	Scurry.....	313	361	451
Shackelford.....	313	361	435	585	667	Shelby.....	313	361	435
Sherman.....	313	361	435	585	667	Somervell.....	358	403	450
Starr.....	313	361	435	585	667	Stephens.....	313	361	435
Sterling.....	313	361	435	585	667	Stonewall.....	313	361	435
Sutton.....	313	361	435	585	667	Swisher.....	313	361	435
Terrell.....	313	361	435	585	667	Terry.....	313	361	435
Throckmorton.....	313	361	435	585	667	Titus.....	332	413	468
Trinity.....	325	367	435	585	667	Tyler.....	313	361	465
Upton.....	313	361	435	585	667	Uvalde.....	313	361	435
Val Verde.....	313	416	488	610	719	Van Zandt.....	334	361	451
Walker.....	422	448	549	728	769	Ward.....	313	361	435
Washington.....	388	396	529	660	868	Wharton.....	313	361	435
Wheeler.....	313	361	435	585	667	Wilbarger.....	313	361	435
Willacy.....	313	361	435	585	667	Winkler.....	313	361	435
Wise.....	313	365	438	611	667	Wood.....	313	361	450
Yoakum.....	313	412	505	632	831	Young.....	313	361	435
Zapata.....	313	361	435	585	667	Zavala.....	313	361	435
U T A H					Counties of FMR AREA within STATE				
METROPOLITAN FMR AREAS					0	BR 1	BR 2	BR 3	BR 4
Kane County, UT.....					355	437	547	732	881
Provo-Orem, UT MSA.....					491	518	642	890	1053
*Salt Lake City-Ogden, UT MSA.....					530	615	781	1086	1273
Davis, Salt Lake, Weber					NONMETROPOLITAN COUNTIES				
0					0	BR 1	BR 2	BR 3	BR 4
Beaver.....	336	412	516	691	831	Box Elder.....	374	416	521
Cache.....	374	461	578	772	929	Carbon.....	361	412	516
Daggett.....	366	500	664	833	932	Duchesne.....	336	412	516
Emery.....	336	412	516	691	831	Garfield.....	336	412	516
Grand.....	336	412	516	691	831	Iron.....	343	468	582
Juab.....	336	412	516	691	831	Millard.....	336	412	516
Morgan.....	336	412	516	691	831	Piute.....	336	412	516
Rich.....	336	412	516	691	831	San Juan.....	336	412	516
Sanpete.....	336	412	516	691	831	Serier.....	341	412	516
Summit.....	498	615	767	1034	1259	Tooele.....	336	427	516
Utah.....	336	412	516	691	831	Wasatch.....	336	427	516
Washington.....	414	511	678	906	1109	Wayne.....	336	412	516

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

V E R M O N T

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Burlington, VT MSA..... 540 660 883 1203 1452 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, Winoski city
 Franklin county towns of Fairfax town, Georgia town
 St. Albans city, St. Albans town, Swanton town
 Grand Isle county towns of Grand Isle town
 South Hero town

NONMETROPOLITAN COUNTIES

0 BR 1 BR 2 BR 3 BR 4 BR Towns within non metropolitan counties

Addison..... 481 579 675 940 1055
 Bennington..... 434 548 705 896 1044
 Caledonia..... 418 500 610 769 881
 Chittenden..... 442 712 803 1118 1317 Bolton town, Buels gore, Huntington town, Underhill town
 Westford town
 Essex..... 399 482 595 749 861
 Franklin..... 481 545 667 847 974 Bakersfield town, Berkshire town, Enosburg town
 Fairfield town, Fletcher town, Franklin town
 Highgate town, Montgomery town, Richford town
 Sheldon town
 Grand Isle..... 413 498 617 776 892 Alburg town, Isle La Motte town, North Hero town
 Lamolle..... 383 534 636 871 998
 Orange..... 398 522 644 850 953
 Orleans..... 370 445 551 694 797
 Rutland..... 439 569 695 873 977
 Washington..... 412 512 691 865 970
 Windham..... 475 550 731 927 1020
 Windsor..... 512 579 724 930 1101

V I R G I N I A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Charlottesville, VA MSA..... 485 574 733 975 1093 Albemarle, Fluvanna, Greene, Charlottesville city
 Clarke County, VA..... 362 511 662 909 927 Clarke
 Culpeper County, VA..... 434 632 735 972 1165 Culpeper
 Danville, VA MSA..... 331 417 489 657 793 Pittsylvania, Danville city
 Johnson City-Kingsport-Bristol, TN-VA MSA..... 345 412 510 662 784 Scott, Washington, Bristol city
 King George County, VA..... 439 584 656 912 918 King George
 Lynchburg, VA MSA..... 393 434 499 657 793 Amherst, Bedford, Campbell, Lynchburg city
 *Norfolk-Virginia Beach-Newport News, VA-NC MSA. 530 598 706 987 1159 Gloucester, Isle of Wight, James City, Mathews, York
 Chesapeake city, Hampton city, Newport News city
 Norfolk city, Poquoson city, Portsmouth city

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

V I R G I N I A continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

*Richmond-Petersburg, VA MSA..... 568 644 750 1043 1231 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..... 333 417 541 694 864 Botetourt, Roanoke, Roanoke city, Salem city
 Warren County, VA..... 354 485 646 848 1058 Warren
 *Washington, DC-MD-VA..... 766 871 1021 1392 1679 Arlington, Fairfax, Loudoun, Prince William, Spotsylvania
 Stafford, Alexandria city, Fairfax city
 Falls Church city, Fauquier, Fredericksburg city
 Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Accomack..... 385 418 487 646 780 Alleghany..... 339 410 482 646 780
 Amelia..... 325 410 482 646 780 Appomattox..... 325 410 482 646 780
 Augusta..... 325 422 512 673 821 Bath..... 325 410 482 646 780
 Bland..... 325 410 482 646 780 Brunswick..... 325 410 482 646 780
 Buchanan..... 325 410 482 646 780 Buckingham..... 325 410 482 646 780
 Caroline..... 461 466 625 828 873 Carroll..... 325 410 482 646 780
 Charlotte..... 325 410 482 646 780 Craig..... 325 410 482 646 780
 Cumberland..... 325 447 517 646 780 Dickenson..... 325 410 482 646 780
 Essex..... 325 458 540 753 888 Floyd..... 325 410 482 646 780
 Franklin..... 325 410 482 646 780 Frederick..... 442 510 613 839 1005
 Giles..... 325 410 482 646 780 Grayson..... 325 410 482 646 780
 Greensville..... 325 422 482 646 780 Halifax..... 325 410 482 646 780
 Henry..... 325 410 482 646 780 Highland..... 325 410 482 646 780
 King and Queen..... 325 466 525 657 780 King William..... 325 447 499 646 780
 Lancaster..... 407 457 515 686 836 Lee..... 325 410 482 646 780
 Louisa..... 325 424 522 725 780 Lunenburg..... 325 410 482 646 780
 Madison..... 326 485 546 684 896 Mecklenburg..... 325 410 482 646 780
 Middlesex..... 325 412 482 646 780 Montgomery..... 334 439 516 717 848
 Nelson..... 325 410 482 646 780 Northampton..... 325 410 482 646 780
 Northumberland..... 325 410 482 646 780 Nortoway..... 325 410 482 646 780
 Orange..... 361 490 657 915 1073 Page..... 378 426 482 646 780
 Patrick..... 325 410 482 646 780 Prince Edward..... 365 412 482 646 780
 Pulaski..... 325 410 482 646 780 Rapahannock..... 329 535 602 835 984
 Richmond..... 325 434 486 646 799 Rockbridge..... 325 410 482 646 780
 Rockingham..... 325 451 571 782 917 Russell..... 325 410 482 646 780
 Shenandoah..... 429 439 541 750 852 Smyth..... 325 410 482 646 780
 Southampton..... 325 410 482 646 780 Surry..... 338 410 482 646 780
 Sussex..... 325 410 482 646 780 Tazewell..... 325 410 482 646 780

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	0 BR 1	BR 2	BR 3	BR 4	BR
Westmoreland.....	325	439	584	735	951	Wise.....	325	410	482	646	780
Wythe.....	340	410	482	646	780						

WASHINGTON

METROPOLITAN FMR AREAS

0 BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE

Bellingham, WA MSA.....	444	576	767	1059	1255	Whatcom
Bremerton, WA MSA.....	515	594	770	1041	1265	Kitsap
Olympia, WA MSA.....	529	650	812	1118	1319	Thurston
Portland-Vancouver, OR-WA MSA.....	533	656	809	1124	1221	Clark
Richland-Kennewick-Pasco, WA MSA.....	554	633	759	1057	1240	Benton, Franklin
Seattle-Bellevue-Everett, WA MSA.....	593	722	915	1270	1501	Island, King, Snohomish
Spokane, WA MSA.....	355	483	584	794	888	Spokane
Tacoma, WA MSA.....	458	546	728	1011	1144	Pierce
Yakima, WA MSA.....	399	491	611	819	854	Yakima

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES	0 BR 1	BR 2	BR 3	BR 4	BR

Adams.....	354	424	551	728	808	Asotin.....	354	424	551	728	808
Chelan.....	354	424	551	728	808	Clallam.....	412	510	650	836	914
Columbia.....	354	424	551	728	808	Cowlitz.....	397	444	573	795	808
Douglas.....	413	437	551	728	808	Ferry.....	354	424	551	728	808
Garfield.....	354	424	551	728	808	Grant.....	381	424	551	728	808
Grays Harbor.....	361	424	558	751	867	Jefferson.....	354	457	563	762	808
Kittitas.....	354	424	551	728	808	Klickitat.....	354	424	551	728	808
Lewis.....	354	424	551	728	808	Lincoln.....	354	424	551	728	808
Mason.....	401	498	613	806	867	Okanogan.....	354	424	551	728	808
Pacific.....	354	424	551	728	808	Pend Oreille.....	354	424	551	728	969
San Juan.....	437	597	796	1049	1249	Skagit.....	483	589	696	870	971
Skamania.....	354	424	551	728	808	Stevens.....	354	424	551	728	808
Wahkiakum.....	354	424	551	728	808	Walla Walla.....	354	424	551	738	873
Whitman.....	382	434	578	802	951						

WEST VIRGINIA

METROPOLITAN FMR AREAS

0 BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE

Berkeley County, WV.....	476	509	600	749	841	Berkeley
Charleston, WV MSA.....	323	439	558	766	837	Kanawha, Putnam
Cumberland, MD-WV MSA.....	380	457	565	747	853	Mineral
Huntington-Ashland, WV-KY-OH MSA.....	343	403	496	632	697	Cabell, Wayne
Jefferson County, WV.....	483	535	662	861	976	Jefferson

• 50th percentile areas are indicated by an * before the MSA name.

• Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

1.10% REVISED FY 2001 PAYMENT STANDARD

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Parkersburg-Marietta, WV-OH MSA..... 345 414 474 615 667 Wood
 Steubenville-Weirton, OH-WV MSA..... 327 385 483 615 686 Brooke, Hancock
 Wheeling, WV-OH MSA..... 356 391 483 615 686 Marshall, Ohio

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Barbour..... 289 367 410 527 614 Boone..... 289 352 410 527 614
 Braxton..... 289 352 410 527 614 Calhoun..... 289 352 410 527 614
 Clay..... 289 352 410 527 614 Doddridge..... 289 352 410 527 614
 Fayette..... 289 352 410 527 614 Gilmer..... 317 352 410 527 614
 Grant..... 289 352 410 527 614 Greenbrier..... 289 398 425 529 614
 Hampshire..... 289 352 412 542 614 Hardy..... 289 352 410 527 614
 Harrison..... 317 391 451 563 675 Jackson..... 289 361 410 562 614
 Lewis..... 289 385 410 527 614 Lincoln..... 289 352 410 527 614
 Logan..... 295 352 410 530 629 McDowell..... 289 352 410 527 614
 Marion..... 289 365 450 576 665 Mason..... 289 352 410 527 631
 Mercer..... 289 352 410 527 614 Mingo..... 289 352 410 527 623
 Monongalia..... 364 403 489 675 798 Monroe..... 289 352 410 527 614
 Morgan..... 393 443 496 624 694 Nicholas..... 289 352 410 527 614
 Pendleton..... 289 352 410 527 614 Pleasants..... 297 352 410 527 630
 Pocahontas..... 289 352 410 527 614 Preston..... 289 370 410 527 614
 Raleigh..... 333 393 458 589 690 Randolph..... 289 352 410 527 614
 Ritchie..... 289 352 410 527 614 Roane..... 289 352 410 527 614
 Summers..... 289 352 410 527 614 Taylor..... 353 381 418 527 614
 Tucker..... 289 352 410 527 614 Tyler..... 289 352 432 540 614
 Upshur..... 289 352 412 527 614 Webster..... 289 352 410 527 614
 Wetzel..... 326 352 443 552 697 Witt..... 289 352 410 527 614
 Wyoming..... 289 352 410 527 614

W I S C O N S I N

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Appleton-Oshkosh-Neenah, WI MSA..... 364 448 569 718 828 Calumet, Outagamie, Winnebago
 Duluth-Superior, MN-WI MSA..... 319 411 527 705 821 Douglas
 Eau Claire, WI MSA..... 393 427 561 719 810 Chippewa, Eau Claire
 Green Bay, WI MSA..... 431 475 610 847 851 Brown
 Janesville-Beloit, WI MSA..... 400 505 626 784 879 Rock
 Kenosha, WI MSA..... 462 574 704 968 1090 Kenosha
 La Crosse, WI-MN MSA..... 323 417 529 709 859 La Crosse
 Madison, WI MSA..... 498 626 757 1050 1240 Dane

• 50th percentile areas are indicated by an * before the MSA name.

• Note: The PSS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

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1.10% REVISED FY 2001 PAYMENT STANDARD

W I S C O N S I N continued

METROPOLITAN FMR AREAS

		0 BR 1 BR 2 BR 3 BR 4 BR				Counties of FMR AREA within STATE			
Milwaukee-Waukesha, WI PMSA.....	434	567	712	894	1000	Milwaukee, Ozaukee, Washington, Waukesha			
*Minneapolis-St. Paul, MN-WI MSA.....	567	730	933	1263	1431	Pierce, St. Croix			
Racine, WI PMSA.....	387	479	633	818	894	Racine			
Sheboygan, WI MSA.....	347	447	546	682	847	Sheboygan			
Wausau, WI MSA.....	426	440	551	753	834	Marathon			

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

		NONMETROPOLITAN COUNTIES				0 BR 1 BR 2 BR 3 BR 4 BR					
Adams.....	314	367	468	595	672	Ashtland.....	342	381	468	595	672
Barron.....	314	367	468	595	672	Bayfield.....	314	367	468	595	672
Buffalo.....	314	367	468	595	672	Burnett.....	314	367	468	595	672
Clark.....	314	367	468	595	672	Columbia.....	314	373	490	643	722
Crawford.....	314	367	468	595	672	Dodge.....	398	404	530	666	742
Door.....	314	390	483	621	755	Dunn.....	314	367	479	641	792
Florence.....	314	367	468	595	672	Fond du Lac.....	365	495	586	796	821
Forest.....	314	367	468	595	672	Grant.....	318	367	468	595	672
Green.....	319	367	468	628	672	Green Lake.....	314	367	468	595	672
Iowa.....	326	367	468	614	672	Iron.....	314	367	468	595	672
Jackson.....	314	367	468	595	672	Jefferson.....	314	417	540	699	764
Juneau.....	320	367	468	595	672	Kewaunee.....	314	367	468	595	672
Lafayette.....	319	367	468	595	672	Langlade.....	314	367	468	595	672
Lincoln.....	314	367	468	595	672	Manitowoc.....	317	367	468	595	672
Marquette.....	314	367	468	595	672	Marquette.....	314	367	468	595	672
Menominee.....	314	367	468	595	672	Monroe.....	314	367	468	623	672
Oconto.....	314	367	468	595	672	Oneida.....	314	368	468	600	720
Pepin.....	314	367	468	595	672	Polk.....	314	367	475	595	672
Portage.....	383	404	524	654	809	Price.....	314	367	468	595	672
Richland.....	314	367	468	595	672	Rusk.....	314	367	468	595	672
Sauk.....	368	381	507	631	708	Sawyer.....	314	367	468	595	672
Shawano.....	319	367	468	595	672	Taylor.....	314	367	468	595	672
Trempealeau.....	314	367	468	595	672	Vernon.....	314	367	468	595	672
Vilas.....	314	367	468	595	672	Walworth.....	328	461	599	781	877
Washburn.....	314	367	468	595	672	Waupaca.....	314	367	468	595	706
Waushara.....	314	367	468	595	672	Wood.....	340	391	484	607	682

* 50th percentile areas are indicated by an * before the MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

040301

1.10% REVISED FY 2001 PAYMENT STANDARD

W Y O M I N G

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Casper, WY MSA..... 367 425 545 746 881 Natrona
 Cheyenne, WY MSA..... 414 520 694 888 1078 Laramie

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Albany..... 348 435 581 808 954 Big Horn..... 331 381 488 647 745
 Campbell..... 358 381 488 650 767 Carbon..... 331 381 488 647 745
 Converse..... 331 381 488 647 745 Crook..... 331 381 488 647 745
 Fremont..... 331 381 488 647 745 Goshen..... 331 381 488 647 745
 Hot Springs..... 331 381 488 647 745 Johnson..... 331 381 488 647 745
 Lincoln..... 331 381 488 647 745 Niobrara..... 331 381 488 647 745
 Park..... 331 381 488 647 753 Platte..... 331 381 488 647 745
 Sheridan..... 331 381 488 647 753 Sublette..... 368 414 488 647 745
 Sweetwater..... 344 381 488 650 767 Teton..... 440 562 747 1004 1095
 Uinta..... 347 381 488 649 784 Washakie..... 331 381 488 647 745
 Weston..... 331 381 488 647 745

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Pacific Islands..... 771 926 1097 1376 1547

P U E R T O R I C O

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Aguadilla, PR MSA..... 239 291 346 430 485 Aguada Municipio, Aguadilla Municipio, Moca Municipio
 Arecibo, PR PMSA..... 258 314 369 462 521 Arecibo Municipio, Camuy Municipio, Hatillo Municipio
 Caguas, PR PMSA..... 303 362 429 540 601 Caguas Municipio, Cayey Municipio, Cidra Municipio
 Mayaguez, PR MSA..... 283 346 411 511 576 Gurabo Municipio, San Lorenzo Municipio
 Mayaguez, PR MSA..... 283 346 411 511 576 Anasco Municipio, Cabo Rojo Municipio
 Mayaguez, PR MSA..... 283 346 411 511 576 Hormigueros Municipio, Mayaguez Municipio
 Ponce, PR MSA..... 281 345 407 509 572 Sabana Grande Municipio, San German Municipio
 Ponce, PR MSA..... 281 345 407 509 572 Guayanilla Municipio, Juana Diaz Municipio
 Ponce, PR MSA..... 281 345 407 509 572 Penuelas Municipio, Ponce Municipio, Villalba Municipio
 Yauco Municipio
 San Juan-Bayamon, PR PMSA..... 380 463 547 684 769 Aguas Buenas Municipio, Barceloneta Municipio
 San Juan-Bayamon, PR PMSA..... 380 463 547 684 769 Bayamon Municipio, Canovanas Municipio
 San Juan-Bayamon, PR PMSA..... 380 463 547 684 769 Carolina Municipio, Catano Municipio, Ceiba Municipio
 San Juan-Bayamon, PR PMSA..... 380 463 547 684 769 Comerio Municipio, Corozal Municipio, Dorado Municipio
 San Juan-Bayamon, PR PMSA..... 380 463 547 684 769 Fajardo Municipio, Florida Municipio, Guaynabo Municipio
 San Juan-Bayamon, PR PMSA..... 380 463 547 684 769 Humacao Municipio, Juncos Municipio
 San Juan-Bayamon, PR PMSA..... 380 463 547 684 769 Las Piedras Municipio, Loiza Municipio
 San Juan-Bayamon, PR PMSA..... 380 463 547 684 769 Luquillo Municipio, Manati Municipio, Morovis Municipio

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

040301

1.10% REVISED FY 2001 PAYMENT STANDARD

P U E R T O R I C O continued

METROPOLITAN FMR AREAS

0 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 0 BR 1 BR 2 BR 3 BR 4 BR NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Adjuntas Municipio..... 224 277 325 410 453 Aibonito Municipio..... 224 277 325 410 453
 Arroyo Municipio..... 224 277 325 410 453 Barranquitas Municipio.. 224 277 325 410 453
 Ciales Municipio..... 224 277 325 410 453 Coamo Municipio..... 224 277 325 410 453
 Culebra Municipio..... 224 277 325 410 453 Guanica Municipio..... 224 277 325 410 453
 Guayama Municipio..... 224 277 325 410 453 Isabela Municipio..... 224 277 325 410 453
 Jayuya Municipio..... 224 277 325 410 453 Lajas Municipio..... 224 277 325 410 453
 Lares Municipio..... 224 277 325 410 453 Las Marias Municipio.... 224 277 325 410 453
 Maricao Municipio..... 224 277 325 410 453 Maunabo Municipio..... 224 277 325 410 453
 Orocovis Municipio..... 224 277 325 410 453 Patillas Municipio..... 224 277 325 410 453
 Quebradillas Municipio.. 224 277 325 410 453 Rincon Municipio..... 224 277 325 410 453
 Salinas Municipio..... 224 277 325 410 453 San Sebastian Municipio.. 224 277 325 410 453
 Santa Isabel Municipio.. 224 277 325 410 453 Utuado Municipio..... 224 277 325 410 453
 Vieques Municipio..... 224 277 325 410 453

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

St. Croix..... 536 650 767 957 1072

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

St. Johns/St. Thomas.... 688 834 982 1238 1374

* 50th percentile areas are indicated by an * before the' MSA name.

Note: The PSs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR PS for each extra bedroom.

040301



Federal Register

**Wednesday,
June 6, 2001**

Part IV

Department of Education

**Intent To Repay to the State of Illinois
Department of Human Services Funds
Recovered as a Result of a Preliminary
Department Decision; Notice**

DEPARTMENT OF EDUCATION**Intent To Repay to the State of Illinois
Department of Human Services Funds
Recovered as a Result of a Preliminary
Department Decision**

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h (1994), the U.S. Secretary of Education intends to repay to the State of Illinois Department of Human Services (IDHS), under a grantback arrangement, an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) as a result of a Preliminary Department Decision (PDD). This notice describes the IDHS' plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: We must receive your comments on or before July 6, 2001.

ADDRESSES: Address all comments about the proposed grantback to Syed M. Asghar, U.S. Department of Education, 400 Maryland Avenue, SW., room 3215, Switzer Building, Washington, DC 20202-6132. If you prefer to send your comments through the Internet, use the following address: syed.asghar@ed.gov.

FOR FURTHER INFORMATION CONTACT:

Syed M. Asghar. Telephone: (202) 205-3015. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain the document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:**A. Background**

In August 1998, the Department recovered \$4,942,253 from the IDHS under the terms of a Settlement Agreement entered into between IDHS and the Department on June 17, 1998, which resolved the audit determination of the June 20, 1997 PDD, bearing Audit Control Number 05-53012. The PDD originally sought a refund in the amount of \$11,173,422 for violations of the Office of Management and Budget (OMB) Circular A-87 relating to the charging of indirect costs to the State's Vocational Rehabilitation (VR) Services

Program grants for Federal fiscal years (FYs) 1993 and 1994.

The overclaimed indirect costs resulted from the organizationwide audit conducted in accordance with the Single Audit Act of 1984, Public Law 98-502, 31 U.S.C. 7501-7507, and the provisions of OMB Circular A-128, "Audits of State and Local Governments."

The claims involved the IDHS' administration of the State VR Services Program for Federal FYs 1993 and 1994. This program is authorized by the Rehabilitation Act of 1973, as amended (Act), 29 U.S.C. 701 *et seq.* The Act authorizes grants to assist States to meet the current and future needs of individuals with disabilities so that those individuals may prepare for and engage in gainful employment to the extent of their capabilities.

The PDD established the fact that IDHS' predecessor, the Illinois Department of Rehabilitation Services (DORS), had violated OMB Circular A-87 by overclaiming \$11,173,422 in FYs 1993 and 1994 as indirect costs to the VR program. Based on documentation submitted by IDHS after it filed its application for review of the PDD with the Office of Administrative Law Judges, the Department agreed on June 16, 1998 to reduce its claims from \$11,173,422 to \$4,942,252.38. In August 1998, IDHS refunded these funds to the Department. On November 15, 1999, the IDHS requested grantback of \$3,706,689, which represents 75 percent of these recovered funds.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that, whenever the Secretary has recovered funds under an applicable program because the recipient made an expenditure of funds that was not allowable, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the grantee affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback requested by the IDHS if the Secretary determines that the—

(a) Practices and procedures of the IDHS and its predecessor that resulted in the findings have been corrected, and the State agency is, in all other respects, in compliance with the requirements of the applicable programs;

(b) IDHS has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population

that was affected by the failure to comply or by misexpenditures that resulted in the PDD; and

(c) Use of funds to be awarded under the grantback arrangement in accordance with the IDHS' plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the IDHS has applied for a grantback totaling \$3,706,689, which is 75 percent of the principal amount of the recovered funds, and has submitted a plan for use of the grantback funds. The agency will use the funds for the following purposes:

IDHS proposes to use the entire sum of requested grantback funding, \$3,706,689, to augment case service provision by its counselors in its offices throughout the State. None of these funds will be used for administrative or operations expenses. Specifically, the major goal is to double the number of competitive outcomes while remaining at the same funding level. This means instead of successfully placing approximately 5,150 persons per year in competitive employment, IDHS projects a goal of 10,300.

Instead of continuing to purchase an increasing amount of services from community rehabilitation providers, IDHS will train counseling staff to perform some of these functions themselves. IDHS maintains that this is a more efficient use of available funds. Counseling staff will take over services such as job development, job placement, and vocational assessment.

Illinois is already on "order of selection" to serve customers having only significant and most significant disabilities and wants to avoid narrowing the order of selection any further than this. By using the grantback funds, the agency can open up more categories of disabilities for the provision of VR services.

The procedural violation, which led to the repayment of Federal funds, has been corrected by the IDHS. IDHS' non-compliance with OMB Circular A-87 was due to the absence of appropriate Illinois General Revenue Fund (GRF) appropriations to allow DORS to allocate DORS' indirect administrative costs between State and Federal VR program related monies. In July 1997, IDHS, in order to come into compliance with OMB Circular A-87, instituted a revised budgeting procedure.

An estimate is now prepared at the beginning of each State fiscal year to determine the amount of anticipated VR

indirect costs reimbursements. A second estimate is made as to the amount of overall administrative costs associated with the transitioned DORS' staff (those administrative staff funded from a non-GRF appropriation). Both of these estimates are compared to determine what proportion of the anticipated funding will not be covered by the receipt of Federal indirect cost reimbursements. IDHS then requests from the Illinois General Assembly sufficient GRF funding to allow the State of Illinois to pay its share of indirect costs.

Thereafter, whenever funding is required for administrative purposes, following the timeliness criteria mandated by the Cash Management Improvement Act, the indirect cost is calculated on the appropriate basis and drawn down from the Federal sources. As soon as this money is received, it is deposited into the Federal Vocational Rehabilitation Fund. At the same time, a proportionate amount of general revenue is drawn down to fund the non-Federal part of the operation. In this way, no overcommitment is made on receipts of Federal funds for administration, and only the appropriate parts associated with the Federal programs are claimed and deposited into the Federal Vocational Rehabilitation Fund.

With the use of this process, the cost principles disallowances are eliminated. If the estimate of overall administrative costs is in error, there may be small adjustments necessary at the end of the Federal fiscal years to accommodate the under or over receipt of Federal funds associated with the administrative operations. If the adjustments require additional Federal revenue funding, then either adjustments will be made in the succeeding year or at the time of audit finalization for the appropriate fiscal year period.

Since this procedure was instituted by the IDHS in July 1997, there have been no audit exceptions noted against the indirect costs charged to the Federal VR program and none are anticipated.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the IDHS. Based

upon that review, the Secretary has determined that the conditions under section 459(a) of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 459(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or other investigations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Illinois Department of Human Services under a grantback arrangement. The grantback award would be in the amount \$3,706,689, which is 75 percent—the maximum percentage authorized by statute—of the principal amount recovered as a result of the settlement agreement.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The IDHS agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

(2) The plan that the IDHS submitted and any amendments to the plan that are approved in advance by the Secretary; and

(3) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by September 30, 2001, in accordance with section 459(c) of GEPA.

(c) The IDHS must, no later than January 1, 2002, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and any amendments that have been approved in advance by the Secretary; and

(2) Describes the results and effectiveness of the project for which the funds were spent.

(d) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(e) Before funds will be repaid pursuant to this notice, the IDHS must repay to the Department any debts that become overdue or enter into a repayment agreement for those debts.

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(Catalog of Federal Domestic Assistance Number 84.126 State Vocational Rehabilitation Services Program).

Dated: June 1, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01-14225 Filed 6-5-01; 8:45 am]

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Residual disinfectant and disinfectant byproducts; establishment of allowable levels; comments due by 6-11-01; published 3-28-01

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

H.R. 581/P.L. 107-13

To authorize the Secretary of the Interior and the Secretary of Agriculture to use funds

appropriated for wildland fire management in the Department of the Interior and Related Agencies Appropriations Act, 2001, to reimburse the United States Fish and Wildlife Service and the National Marine Fisheries Service to facilitate the interagency cooperation required under the Endangered Species Act of 1973 in connection with wildland fire management. (June 3, 2001; 115 Stat. 24)

Last List June 1, 2001

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